



## PURCHASE AND SALE AGREEMENT

THIS PURCHASE AND SALE AGREEMENT (the "**Agreement**") is made and entered into as of the Effective Date (as hereinafter defined) by and between TVC MARGATE CO., LLC, a Florida limited liability company (hereinafter "**Seller**"), and MEDALIST RESTAURANT GROUP, LLC, a Florida limited liability company and/or its assigns, (hereinafter "**MEDALIST and/or Purchaser**"). In consideration of the mutual covenants and promises herein set forth and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. **Purchase and Sale.** Seller agrees to sell to Purchaser and Purchaser agrees to purchase from Seller that certain parcel of property comprised of approximately 1.68 acres (the "**Realty**") located in Broward County, Florida, as more particularly described in Exhibit "A" attached to this Agreement, together with the following property and rights:

- (a) All land together with all easements, privileges, rights-of-way, and appurtenances pertaining to or accruing to the benefit of the Realty.
- (b) All deposits, licenses, permits, authorizations, approvals and contract rights pertaining to ownership and/or operation of the Realty.

The Realty and all of the other property and rights described in this paragraph 1 are hereinafter collectively called the "**Property**."

2. **Purchase Price.** The purchase price to be paid by Purchaser to Seller for the Property shall be One Million Five Hundred Thousand Dollars and No/100 (\$1,500,000.00) Dollars (the "**Purchase Price**").

3. **Deposit.** To secure the performance by Purchaser of its obligations under this Agreement, Purchaser shall, within five (5) days of the execution of this Agreement deliver to James J. Hurchalla & Associates, P.A., 1700 E Las Olas Blvd., Ste. 206, Fort Lauderdale, FL 33301 (the "**Escrow Agent**"), the sum of Ten Thousand Dollars and No/100 (\$10,000.00) Dollars by check, which amount shall be deposited to Escrow Agents escrow account, held in escrow as an initial earnest money deposit hereunder and delivered to Purchaser or Seller as provided for hereafter (the "**Initial Deposit**").

The Escrow Agent shall hold the Initial Deposit in a non-interest bearing account maintained with or issued by a commercial bank or savings and loan association doing business in Broward County, Florida, pursuant to the terms of this Agreement. The Initial Deposit and the Second Deposit are hereinafter collectively referred to as the "**Deposit**".

4. **Terms of Payment.** The Purchase Price, subject to the prorations, adjustments and credits provided for herein, shall be paid at Closing by wire transfer on the date of Closing.

5. **Title and Survey.** Within thirty (30) days following the Effective Date hereof ("**Title Delivery Date**"), Purchaser, at Purchaser's expense, shall obtain a commitment for an Owner's title insurance policy (the "**Title Insurance**") naming Purchaser as the proposed insured and in the amount of the Purchase Price (the "**Commitment**"). The Commitment

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shall be continued, endorsed or updated at Purchaser's expense to have an effective date within thirty (30) days before Closing. The Commitment and continuation thereof shall show Seller to be vested with good, marketable and insurable fee simple title to the Realty, free and clear of all liens, encumbrances and other matters, except only the following (the "Permitted Exceptions"):

- (a) Ad valorem real estate taxes for the year of Closing and subsequent years.
- (b) All applicable zoning ordinances and regulations; and
- (c) Such other matters as are approved by Purchaser in writing or are otherwise deemed Permitted Exceptions as noted below.

Title shall be deemed good, marketable and insurable only if the Commitment will result in the issuance of an Owner's Policy effective as of Closing without any exceptions, standard or otherwise, other than the Permitted Exceptions (subject to the reasonable requirements made of Purchaser pursuant to the Commitment).

A. If Purchaser finds that title to the Realty is not good, marketable and insurable in accordance with the standards adopted by the Florida Bar, Purchaser shall, no later than ten (10) days following the expiration of the Title Delivery Date (the "Title Objection Deadline"), notify Seller in writing specifying the defects (which defects shall also include any UCC-1 Financing Statements filed with the Florida Secretary of State); provided that if Purchaser fails to give Seller written notice of defects before the expiration of the Title Objection Deadline, the defects shown in the Commitment shall be deemed to be Permitted Exceptions. Purchaser may raise additional objections, however, only as to matters first shown by subsequent endorsements of the Commitment issued after the Title Objection Deadline, the notice for which shall be delivered to Seller within not more than three (3) business days following delivery to Purchaser of such updated endorsement to the Commitment. If Purchaser has given Seller timely written notice of defects and the defects render the title other than as represented in this Agreement, Seller shall have five (5) days from the date of receipt of Purchaser's notice of the particular defects claimed, either (1) to remedy the objection and notify Purchaser of such remedy, or (2) to notify Purchaser that Seller is unable or unwilling to remedy the objection. If Seller fails or refuses to remedy the objection as described above and within the time period above, Purchaser may elect, within five (5) days of receipt of Seller's notice of (1) or (2) above, to: (x) terminate this Agreement, in which case Purchaser shall receive a refund of the Deposit or (y) waive such defect(s) and proceed with this transaction subject thereto; provided, however, that in the event that any such defect(s) results from liens or encumbrances having liquidated amounts, Seller shall cause such defects to be paid off and released at Closing. If Purchaser does not notify Seller of a particular defect by the date required in this Section 4C or waives (or is deemed to have waived) its objections to such defect in accordance with this Section 4C, then Purchaser shall be deemed to have approved of that matter identified in the Commitment (or updated Commitment, as described below, if applicable) and the Updated Survey.

All such title and survey matters that Purchaser has not objected to by the date required in this Section 4C, and those title and survey matters that are waived as described in this Section 4C, are collectively referred to as "Permitted Encumbrances." Purchaser agrees that: any

matters not shown on the Existing Survey which would be shown on a current survey if Purchaser does not order an Updated Survey; all applicable laws, regulations and zoning ordinances; the rights of the public and any governmental unit in any part of the Subject Premise taken, used or deeded for street, highway or drain purposes; and taxes and assessments, general or special, and any liens arising therefrom, which are not due and payable as of the Closing Date (as defined below) shall be Permitted Encumbrances.

Seller agrees to remove by payment at or prior to Closing, bonding, or otherwise any lien against the Realty capable of removal by the payment of a liquidated sum of money. At Seller's option, the date of Closing may be extended for a period not to exceed thirty (30) days for purposes of eliminating any title defects. In the event that Seller does not eliminate any defects as of the date of Closing, as the same may be extended under the preceding sentence, Purchaser shall have the option of either: (i) closing and accepting the title "as is," without reduction in the Purchase Price (other than deducting from the Purchase Price the amount of any lien or encumbrance which can be satisfied by a liquidated amount); (ii) allowing Seller additional time to eliminate the title defects, or (iii) terminating this Agreement in which event the Escrow Agent shall return the Deposit (and all interest thereon) to Purchaser, whereupon both parties shall be released from all further obligations under this Agreement, except those obligations specifically stated to survive hereunder, unless such defects were caused by Seller's own conduct, in which event, Seller shall remain liable to Purchaser for damages equal to Purchaser's actual out of pocket expenses caused thereby. Seller shall execute appropriate documents approved by Seller as may be reasonably required by the Title Insurer, Purchaser's attorney, or Purchaser's lender so long as the same is at no material cost to Seller (provided, however, Purchaser acknowledges that this Agreement is not contingent or conditioned upon Purchaser obtaining mortgage financing).

Within sixty (60) days following the Effective Date ("**Survey Delivery Date**") Purchaser, at its expense, may obtain a survey of the Property prepared by a licensed surveyor ("**Survey**"). If the Survey shall show or reflect any matter, thing or condition which is reasonably objectionable or unacceptable to Purchaser, including, without limitation, any encroachment, overlap, boundary dispute or other matters which renders Seller's title to the Realty unmarketable or uninsurable without exception for encroachments or other matter shown on the Survey, Purchaser shall notify Seller of that fact in writing within five (5) business days after expiration of the Survey Delivery Date. Such written notice shall specify those matters indicated on the Survey which render Seller's title to the Realty unmarketable or uninsurable without exception, as aforesaid (hereinafter referred to as "**Survey Defects**"), and the Survey Defects shall thereupon and thereafter be deemed to be, and treated and handled as title defects in the manner and in the timeframes specified above. The legal description set forth on the Survey shall be the legal description used in the deed delivered by Seller to Purchaser, unless otherwise agreed by the Parties.

6. **Deliveries.** Within thirty (30) days following the Effective Date (and thereafter, as applicable), Seller shall deliver to Purchaser true, correct and complete copies of the following deliveries in the possession or control of Seller (collectively, the "**Due Diligence Items**"):

- (a) All contracts, arrangements, licenses, concessions, easements, service arrangements, employment contracts or agreements, brokerage agreements, and any and all other contracts

or agreements, either recorded or unrecorded, written or oral, affecting the Property or any portion thereof, or the use thereof (the "Contracts"), and all new Contracts hereafter entered into by Seller which would survive the Closing without Purchaser's prior written consent;

- (b) The invoice or invoices issued for the years 2017 and 2018 for real estate taxes and any subsequently issued notices pertaining to real estate taxes or assessments applicable to the Property; surveys, title insurance policies, plats, land use and zoning documents and applications, any reports, documents, topographical surveys, rock and/or soil tests and conditions, environmental studies or reports any other reports, studies or materials that pertain to environmental hazards, flood studies or any aspect of the physical or environmental condition of the Property and delivery, if applicable, of the legal subdivision of the Property.

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All reports and documents delivered to Purchaser above shall, unless written by Seller, shall be without any warranty or representation of accuracy by Seller and may not be relied on without further reliance letters or assurances from the preparer of such reports or documents, all of such being furnished for informational purposes only.

7. **Conditions Precedent.** Purchaser's obligation to close the transaction provided for in this Agreement shall be subject to the following conditions precedent to Closing:

- (a) Inspection Period:

Purchaser shall have Ninety (90) days following the Effective Date, which shall be referred to in this Agreement from time to time as the "Inspection Period", to satisfy the items identified below to their sole satisfaction. Purchaser shall have the right to conduct a complete physical inspection of the Property, review and approve the Phase I, REA, survey, title report zoning and soils report, and any other due diligence investigations that it determines necessary to evaluate the Property for its intended use. In the event Seller has a Phase I, survey zoning soils report and/or any other reports/studies concerning the Property in its possession, Seller shall provide a copy of all such reports/studies to Purchaser within five business (5) days of executing a Purchase Agreement.

Purchaser may elect, in its sole and absolute discretion, as a result of its inspection of the Property, not to purchase the Property, whereby the Purchaser shall provide written notice to Seller on or before the expiration of the Inspection Period and leave the Property in the condition existing as of the Effective Date. Upon Purchaser's termination of the Agreement as set forth herein, the Escrow Agent shall deliver to the Purchaser the Deposit, together with all interest accrued thereon, (without the necessity of Escrow Agent receiving a Release or any written document from Seller), and the parties shall be released from all further obligations each to the other under this Agreement. If Purchaser determines to proceed with the purchase of the Property at the conclusion of the Inspection Period, then Purchaser shall, before the end of the Inspection Period, so notify Seller in writing ("**Purchaser's Notice to Proceed**"), in which case Purchaser shall be deemed to have approved and waived all conditions of this Agreement, (subject to the provisions of Section 8 below as to Loan Condition), including the Due Diligence Items, and the Deposit shall become nonrefundable except as expressly provided herein. As of the Closing, there shall be no Contracts (except Permitted Encumbrances and those easements and matters yet unrecorded and required as

part of Seller's development of the Realty that Purchaser is advised of during the Inspection Period) entered into by Seller which would affect the Property that cannot be cancelled by Purchaser upon not more than thirty (30) days' notice and without payment of premium or charge therefore, and further excepting those Contracts that Purchaser has consented to, which consent shall not be unreasonably withheld, conditioned or delayed.

- (b) At all times during the term of this Agreement and as of Closing, all of the representations and warranties by Seller contained in this Agreement shall be materially true and correct to the best of Seller's current actual knowledge.

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Permitting Period: a) Purchaser shall have an additional 120 days after the expiration of the Inspection Period to secure all government approvals and permits it deems necessary, including drive-up facilities. Seller will reasonably cooperate with Purchaser in its pursuit of approvals. b) Purchaser may terminate the Contract during the Permitting Period if it is unsuccessful in its efforts in securing all government approvals and permits it deems necessary, including drive-up facilities and all deposits shall be refundable.

Permit Extension Options: Additionally, Purchaser shall have two (2) options to extend the Permitting Period for thirty (30) days each. In the event Purchaser elects to exercise its option(s), Purchaser shall (i) notify Seller and the escrow officer seven (7) days prior to the end of the Permitting Period or the then current extension thereof; and (ii) deposit an additional \$10,000.00 with escrow for each thirty (30) day extension, which together with the initial deposit shall be nonrefundable (except in the event of Seller's default) or a failure of Purchaser's condition to close including receipt of permits for its intended use) and immediately available to Seller, but shall be applied towards the purchase price.

Closing Date: The closing date shall be 30 days after the end of the Permitting Period.

8. Financing Condition. Purchaser's obligation to close the transaction provided for in this Agreement shall be subject to securing financing. During the Inspection Period, Purchaser shall arrange for financing and provide Seller with evidence that financing has been approved which approval shall state the amount of the financing together with evidence of Purchaser's equity contribution which loan and equity shall not be less than the Purchase Price. In the event satisfactory evidence of a loan and equity at least equal to the Purchase Price is not provided to Seller within the Inspection Period, Seller may terminate this Agreement and neither party shall have any liability to the other in the event of such termination.

9. Seller's Representations. Seller represents and warrants to Purchaser as follows to the best of Seller's current actual knowledge following the date of Seller obtaining control of the Property:

- (a) Seller has not entered into any leases, contracts, arrangements, licenses, concessions, easements, or other agreements, including, without limitation, service arrangements and employment agreements, either recorded or unrecorded, written or oral, affecting the Property, or any portion thereof or the use thereof other than the Contracts and other

instruments identified in this Agreement. Each of the Contracts, if any: (i) is in good standing and free from default, (ii) fully assignable to Purchaser without any change in the terms and provisions thereof, and (iii) may be cancelled by Purchaser upon not more than thirty (30) days' notice and without payment of premium or penalty therefore. Seller shall not modify any of the Contracts, and Seller shall not enter into any new Contract or other agreement, including, but not limited to, any leases, affecting the Realty, or any portion thereof or the use thereof, without the prior written consent of Purchaser.

- (b) Seller has no notice or knowledge of (i) any pending improvement liens to be made by any governmental authority with respect to the Realty; (ii) any violations of zoning ordinances or other governmental regulations with respect to the Property; (iii) any pending or threatened lawsuits with respect to the Property; or (iv) any pending or threatened condemnation proceedings with respect to the Property, other than the following:
- (c) Seller shall comply prior to Closing with all laws, rules, regulations, and ordinances of all governmental authorities having jurisdiction over the Property. Seller shall be responsible for and shall promptly pay all amounts owed for labor, materials supplied, services rendered and/or any other bills or amounts related to Seller and Seller's ownership and/or operation of the Property prior to Closing.
- (d) Prior to Closing, no portion of the Property or any interest therein shall be alienated, encumbered, conveyed or otherwise transferred by Seller.
- (e) Neither the execution of this Agreement or the consummation of the transactions contemplated hereby will: (i) result in a breach of, or default under, any agreement to which Seller is a party or by which the Property is bound, or (ii) violate any restrictions to which Seller is subject.
- (f) Seller is not a "foreign person" within the meaning of the United States tax laws and to which reference is made in Internal Revenue Code Section 1445. At Closing, Seller shall deliver to Purchaser an affidavit to such effect, and also stating Seller's individual social security numbers. Seller acknowledges and agrees that Purchaser shall be entitled to fully comply with Internal Revenue Code Section 1445 and all related sections and regulations, as same may be modified and amended from time to time, and Seller shall act in accordance with all reasonable requirements of Purchaser to effect such full compliance by Purchaser.
- (g) There are no leases or other occupancy agreements, either written or oral, which affect the Property and Seller has exclusive possession of the Property.
- (h) Seller has no actual knowledge of: (i) any Hazardous Substance (as hereinafter defined) present on the Realty, (ii) any present or past generation, recycling, reuse, sale, storage, handling, transport and/or disposal of any Hazardous Substance on the Realty except that Seller discloses to Purchaser that the adjacent parcel's use is a Wawa gas and convenience center with underground storage tanks, (iii) any failure to comply with any applicable local, state or federal environmental laws, regulations, ordinances or administrative or judicial orders relating to the generation, recycling, reuse, sale, storage, handling, transport and/or disposal of any Hazardous Substance, or (iv) any underground tanks, storage facilities or holding vaults on or under the Property. Seller has not received any notice from any governmental authority or otherwise regarding the presence of any Hazardous Substance,

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any present or past generation, recycling, reuse, sale, storage, handling, transport and/or disposal of any Hazardous Substance (other than disclosed herein) or any failure to comply with any applicable local, state or federal environmental laws, regulations, ordinances or administrative or judicial orders relating to the generation, recycling, reuse, sale, storage, handling, transport and/or disposal of any Hazardous Substance on, under or within the Realty. As used in this Agreement, the term "**Hazardous Substance**" means any substance or material defined or designated as a hazardous or toxic waste material or substance, or other similar term by any federal, state or local environmental statute, regulation or ordinance presently or hereafter in effect, as such statute, regulation or ordinance may be amended from time to time. Notwithstanding the foregoing, Seller has disclosed to Purchaser that the adjacent parcel is a recently built and operating Wawa gas and convenience center.

- (i) Seller has made no written agreement, representation or commitment to any governmental agencies or public authority, utility company, or school district relating to any portion of the Property, which agreement, representation or commitment shall impose an obligation upon Purchaser to (a) make any contributions or dedications of money or land; (b) construct, install or maintain any improvements of a public or private nature on or off the Realty; or limit or restrict, to any specific plans the development, construction or use of the Realty. Furthermore, Seller has no notice or knowledge that any predecessor-in-interest of Seller has made any written agreement, representation or commitment to any governmental agencies or public authority, utility company, or school district relating to any portion of the Property, which agreement, representation or commitment shall impose an obligation upon Purchaser to (a) make any contributions or dedications of money or land; (b) construct, install or maintain any improvements of a public or private nature on or off the Realty; or limit or restrict to any specific plans the development, construction or use of the Realty. Notwithstanding the foregoing Purchaser shall be responsible to comply with all local and governmental ordinances in the development of the Realty for its use.
- (j) Seller has not sought any permits under, nor has Seller received, any jeopardy letters or written notices of violations of, the Endangered Species Act (16 U.S.C. §§ 1531 et seq.) with respect to the Realty, from the United States Fish and Wildlife Service, and Seller is not aware of any reports confirming the presence of endangered species or plants on the Realty.
- (k) Seller is not aware of any legal actions, suits or other legal or administrative proceedings, pending or threatened, affecting the Property, or any portion of it, or affecting Seller's ability to satisfy its obligations under this Agreement, nor has Seller knowledge that any such action is presently contemplated.

The provisions of this paragraph shall survive the Closing for a period not to exceed six (6) months following Closing.

**10. Purchaser's Representations.** Purchaser represents and warrants to Seller as follows:

- (a) This Agreement and all documents executed by Purchaser which are to be delivered to Seller at Closing do not and at the time of Closing will not violate any provision of any agreement or judicial order to which Purchaser is a party or to which Purchaser is subject.

- (b) Purchaser has not (i) made a general assignment for the benefit of creditors, (ii) filed any voluntary petition in bankruptcy or suffered the filing of any involuntary petition by Purchaser's creditors, (iii) suffered the appointment of a receiver to take possession of all, or substantially all, of Purchaser's assets, (iv) suffered the attachment or other judicial seizure of all, or substantially all, of Purchaser's assets, (v) admitted in writing its inability to pay its debts as they come due, or (vi) made an offer of settlement, extension or composition to its creditors generally.
- (c) Purchaser has been duly organized, is validly existing and is in good standing in the state in which it was formed, and, if required to do so, is qualified to do business in the state in which the Realty is located. This Agreement has been, and all documents executed by Purchaser which are to be delivered to Seller at Closing will be, duly authorized, executed and delivered by Purchaser.
- (d) Purchaser is purchasing the Property as investment rental property, and not for Purchaser's own operations or use.
- (e) Purchaser is not a party in interest with respect to any employee benefit or other plan within the meaning of Section 3(3) of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), or of Section 4975(e)(1) of the Code, which is subject to ERISA or Section 4975 of the Code and which is an investor in Seller.
- (f) Other than Seller's Broker (as defined herein) Purchaser has had no contact with any broker or finder with respect to the Property.
- (g) Purchaser is in compliance with, and all beneficial owners of Purchaser are in compliance with, the OFAC laws.

Each of the representations and warranties of Purchaser contained in this Section shall be deemed remade by Purchaser as of the Closing and shall survive the Closing.

#### **11. Purchaser's Independent Inspection.**

- (a) By Purchaser electing to proceed under Section 7(a), Purchaser will be deemed to have acknowledged and agreed that it has been given a full opportunity to inspect and investigate each and every aspect of the Property, either independently or through agents of Purchaser's choosing, including, without limitation:
  - (i) All matters relating to title and survey, together with all governmental and other legal requirements such as taxes, assessments, zoning, use permit requirements and building codes and municipal ordinances;
  - (ii) The physical condition and aspects of the Property, including, without limitation, the interior, the exterior, the square footage within the improvements on the Realty, if any, the structure, seismic aspects of the Property, the foundation, roof, paving, utilities, and all other physical and functional aspects of the Property. Such examination of the physical condition of the Property shall include an examination for the presence or absence of Hazardous Materials, as defined below, which shall be performed or arranged by Purchaser at Purchaser's sole expense. For purposes of this Agreement, "**Hazardous Materials**" shall mean inflammable

explosives, radioactive materials, asbestos, asbestos-containing materials, polychlorinated biphenyls, lead, lead-based paint, radon, under and/or above ground tanks, hazardous materials, hazardous wastes, hazardous substances, oil, or related materials, which are listed or regulated in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. Sections 6901, et seq.), the Resources Conservation and Recovery Act of 1976 (42 U.S.C. Section 6901, et seq.), the Clean Water Act (33 U.S.C. Section 1251, et seq.), the Safe Drinking Water Act (14 U.S.C. Section 1401, et seq.), the Hazardous Materials Transportation Act (49 U.S.C. Section 1801, et seq.), and the Toxic Substance Control Act (15 U.S.C. Section 2601, et seq.), and any other applicable federal, state or local laws (collectively, "**Environmental Laws**");

- (iii) Any easements and/or access rights affecting the Property;
  - (iv) The Contracts and any other documents or agreements of significance affecting the Property; and
  - (v) All other matters of material significance affecting the Property, including, but not limited to, the Due Diligence materials and all items disclosed to Purchaser.
- (b) Except as expressly stated herein, Seller makes no representation or warranty as to the truth, accuracy or completeness of any materials, data or information delivered by Seller to Purchaser in connection with the transaction contemplated hereby. Purchaser acknowledges and agrees that all materials, data and information delivered by Seller to Purchaser in connection with the transaction contemplated hereby are provided to Purchaser as a convenience only and that any reliance on or use of such materials, data or information by Purchaser shall be at the sole risk of Purchaser, except as otherwise expressly stated herein.

## 12. Release.

- (a) Without limiting the above, and subject to (i) the covenants in this Agreement that expressly survive the Closing and (ii) the representations and warranties of Seller contained in this Agreement, Purchaser on behalf of itself and its successors and assigns waives its right to recover from, and forever releases and discharges, Seller, Seller's affiliates, Seller's trustees, beneficiaries, employees and agents and representatives of each of them, and their respective heirs, successors, personal representatives and assigns (collectively, the "**Seller Related Parties**"), from any and all demands, claims, legal or administrative proceedings, losses, liabilities, damages, penalties, fines, liens, judgments, costs or expenses whatsoever (including, without limitation, court costs and attorneys' fees and disbursements), whether direct or indirect, known or unknown, foreseen or unforeseen, that may arise on account of or in any way be connected with or related to the Property, this Agreement and/or the transactions contemplated hereunder, including, without limitation (i) the physical condition of the Property including, without limitation, all structural and seismic elements, all mechanical, electrical, plumbing, sewage, heating, ventilating, air conditioning and other systems, the environmental condition of the Property and the presence of Hazardous Materials on, under or about the Property, (ii) any law or regulation applicable to the Property, including, without limitation, any Environmental Law and any other federal, state or local law, (iii) any matters disclosed to Purchaser, (iv) any Exception Matter or (v) any other matter. EXCEPT AS OTHERWISE SPECIFICALLY PROVIDED FOR IN THIS

AGREEMENT, PURCHASER UNDERSTANDS AND AGREES IT IS ACQUIRING THE PROPERTY "AS-IS" WITH ALL FAULTS.

- (b) PURCHASER ACKNOWLEDGES AND AGREES THAT IT HAS BEEN REPRESENTED BY LEGAL COUNSEL OF ITS CHOICE IN CONNECTION WITH THIS AGREEMENT, AND THAT SUCH COUNSEL HAS EXPLAINED TO PURCHASER THE PROVISIONS OF THIS SECTION
- (c) In this connection, Purchaser hereby agrees, represents and warrants that Purchaser realizes and acknowledges that factual matters now unknown to it may have given or may hereafter give rise to causes of action, claims, demands, debts, controversies, damages, costs, losses and expenses and other claims and liabilities which are presently unknown, unanticipated and unsuspected, and Purchaser further agrees, represents and warrants that the waivers and releases herein have been negotiated and agreed upon in light of that realization and that Purchaser nevertheless hereby intends to release, discharge and acquit Seller and the Seller Related Parties from any such unknown causes of action, claims, demands, debts, controversies, damages, costs, losses and expenses and other claims and liabilities.
- (d) Seller has given Purchaser material concessions regarding this transaction in exchange for Purchaser agreeing to the provisions of this Section.

The provisions of this Section shall survive the Closing.

### **13. Default Provisions.**

- (a) In the event of the failure or refusal of the Purchaser to close this transaction, without fault on Seller's part and without failure of title or any conditions precedent to Purchaser's obligations hereunder, the Seller shall receive the Deposit paid, together with all interest earned thereon, as agreed and liquidated damages for said breach, and as Seller's sole and exclusive remedy for default of Purchaser, whereupon the parties shall be relieved of all further obligations hereunder, except those obligations specifically stated to survive herein.
- (b) In the event of a default by Seller under this Agreement, without fault on Purchaser's part, Purchaser at its option shall have the right to: (i) receive the return of the Deposit (together with all interest earned thereon if the Deposit is in the possession of Escrow Agent), whereupon the parties shall be released from all further obligations under this Agreement, or, alternatively, (ii) seek specific performance of the Seller's obligations. If the remedy of specific performance is unavailable to Purchaser because the Seller has sold or conveyed the Property to a third party, Purchaser shall be entitled to seek recovery of actual money damages. Except as specifically set forth herein, the Purchaser shall not be entitled to seek or demand any separate award for money damages.
- (c) Notwithstanding the foregoing, the Parties expressly waive the right to consequential, special, punitive or exemplary damages for any breach or other claim hereunder, whether in contract or in tort.
- (d) Notwithstanding the foregoing, in the event of a default by either party of any obligations which specifically survive Closing, then the non-defaulting party shall be entitled to seek any

legal redress permitted by law or equity subject to any limitations set forth herein. The provisions hereof shall survive Closing.

**14. No Liability for Exception Matters.** As used herein, the term "Exception Matter" shall refer to a matter which would make a representation or warranty of Seller contained in this Agreement untrue or incorrect and which is disclosed to Purchaser in any due diligence materials or otherwise, or is a matter of public record as disclosed in the Commitment, or is otherwise discovered by or known to Purchaser before the Closing, including, without limitation, matters disclosed in any interviews with tenants, property managers or any other person. If Purchaser first obtains knowledge of any Material Exception Matter, as such term is defined below, after the close of the Contingency Period and prior to Closing and such Exception Matter was not contained in the Due Diligence Materials or the Disclosure Items and is not a matter of public record as disclosed in the Commitment, Purchaser's sole remedy shall be to terminate this Agreement on the basis thereof, upon written notice to Seller within the earlier of (a) five (5) days following Purchaser's discovery of such Exception Matter or (b) the Closing, whichever occurs first, in which event the Deposit shall be returned to Purchaser, unless within five (5) days after receipt of such notice or by the Closing, as the case may be, Seller notifies Purchaser in writing that it elects to attempt to cure or remedy such Exception Matter, in which event there shall be no return of the Deposit unless and until Seller is unable to so cure or remedy within the time period set forth below. Seller shall be entitled to extend the Closing Date for up to fifteen (15) business days in order to attempt to cure or remedy any Exception Matter. Purchaser's failure to give notice within five (5) days after it has obtained knowledge of a Material Exception Matter shall be deemed a waiver by Purchaser of such Exception Matter. Seller shall have no obligation to cure or remedy any Exception Matter, even if Seller has notified Purchaser of Seller's election to attempt to cure or remedy any Exception Matter, and, subject to Purchaser's right to terminate this Agreement as set forth above, Seller shall have no liability whatsoever to Purchaser with respect to any Exception Matters. Notwithstanding the foregoing, in the event Seller fails to cure or remedy such Exception Matter within the time required hereunder, Purchaser may in Purchaser's sole discretion waive any requirement hereunder for Seller to cure or remedy such Exception Matter, and withdraw its notice of intent to terminate this Agreement. Upon any termination of this Agreement, neither party shall have any further rights nor obligations hereunder, except as specifically provided herein. If Purchaser obtains knowledge of any Exception Matter before the Closing, but nonetheless elects to proceed with the acquisition of the Property or is obligated to proceed with the acquisition of the Property, Seller shall have no liability with respect to such Exception Matter, notwithstanding any contrary provision, covenant, representation or warranty contained in this Agreement or in any other documents. As used in this Section, the term "**Material Exception Matter**" shall mean an Exception Matter that would have a negative impact on the value of the Property in excess of Two Hundred Fifty Thousand Dollars (\$250,000). In the event Seller obtains actual knowledge, before Closing, of any fact which is materially contrary to any of the representations or warranties contained herein, Seller agrees to promptly notify Purchaser of that fact, in writing.

**15. Seller's Knowledge.** For purposes of this Agreement and any document delivered at Closing, whenever the phrase "to the best of Seller's knowledge" or the "knowledge" of Seller or words of similar import are used, they shall be deemed to mean and are limited to the current actual knowledge only of Stephen J. Bock, Manager of Seller,

at the times indicated only, and not any implied, imputed or constructive knowledge of such individual(s) or of Seller or any Seller Related Parties (as defined below), and without any independent investigation or inquiry having been made or any implied duty to investigate, make any inquiries or review the Due Diligence materials. Furthermore, it is understood and agreed that such individual(s) shall have no personal liability in any manner whatsoever hereunder or otherwise related to the transactions contemplated hereby.

**16. Prorations.** Real estate and personal property taxes and all other pro-ratable items for the year of Closing shall be prorated as of the date of the Closing. In the event the taxes for the year of Closing are unknown, the tax proration will be based upon the taxes for the prior year, and at the request of either party, the taxes for the year of Closing shall be re-prorated and adjusted when the tax bill for such year is received and the actual amount of taxes is known ; provided, however, Seller shall not be responsible for prorated increases in such taxes to the extent any increase is as a result of an increased valuation based on the purchase price hereunder, or based on a change in use of the Property by Purchaser. Real estate and personal property taxes for tax years preceding the year of Closing shall be paid by Seller. Any water, electricity, or other utility charges for services furnished to the Property through the date of Closing shall be paid by Seller. The provisions of this paragraph shall survive the Closing.

**17. Improvement Liens.** Certified, confirmed or ratified liens or assessments for governmental improvements as of the date of the Closing, if any, shall be paid in full by Seller, and pending liens for governmental improvements as of the date of the Closing shall be assumed by the Purchaser, provided that where the improvement has been substantially completed as of the date of Closing, such pending lien shall be considered certified. Notwithstanding the above, any liens or assessments for impact fees or other fees related to Purchaser's Intended Improvements shall be paid by Purchaser.

**18. Closing Costs.** The parties shall bear the following costs:

- (a) The Purchaser shall be responsible for payment of the following: (i) any and costs and expenses of architectural, engineering and other inspection and feasibility studies and reports incident to Purchaser's inspections; (ii) development approvals; (iii) Survey; (iv) the premium for an owner's title insurance policy, and (v) the cost of recording the deed of conveyance.
- (b) The Seller shall be responsible for payment of the following: (i) the documentary stamps and surtax or surcharge due on the deed of conveyance; (ii) the cost of the title and lien searches up to a maximum of \$1,500.00 (iii) the recording costs on documents necessary to clear title, and (iv) real estate commissions, if any.
- (c) Each party shall pay its own legal fees.

**19. Closing.**

At Closing, Purchaser shall pay the Purchase Price to Seller. Moreover, Seller and Purchaser shall each execute the following closing documents at Closing:

- (a) counterpart closing statements;

- (b) such other documents as are reasonably necessary to consummate this transaction, including but not limited to documents required by Purchaser's mortgage lender at no material cost to Seller and so long as such documents do not modify Seller's rights, obligations or liability under this Agreement.

**20. Brokers.** The parties each represent and warrant to the other that it has dealt with no person or entities in the location of the Property or the negotiation of this sale and purchase other than Friedman Real Estate Group as the listing agent of Seller and SRS Real Estate Partners who represents the Purchaser. Seller shall pay in full, as and when due, the brokerage fee due to such broker at the time of Closing, (the "**Brokerage Commission**"). The Brokerage Commission in the amount of six percent (6%) shall be shared between the named brokers equally (3% to each) due and payable only at the time of and in the event of the actual funding and closing of the sale described herein and neither Seller nor Purchaser shall have any responsibility therefore or any liability if for any reason, said sale does not close

**21. Inspections.** Purchaser, and Purchaser's agents and contractors, shall have the right during the term of this Agreement to enter upon the Realty at reasonable times for purposes of inspection and making tests and studies thereon. Seller agrees to make available to Purchaser, for Purchaser's inspection during normal business hours, all of Seller's Plans, Contracts, Licenses, warranties, tax invoices, and any and all other documents related to the ownership and/or operation of the Property. Throughout the term of this Agreement, Seller, its agents and employees shall at all times cooperate with Purchaser, its agents and contractors in connection with their performance of the inspections provided herein. Purchaser agrees to indemnify, defend and hold harmless Seller from and against all liabilities, damages, claims, costs, fees and expenses whatsoever (including reasonable attorney's fees and court costs at trial and all appellate levels) arising out of or resulting from any such inspection or investigation. Notwithstanding anything to the contrary contained in this Agreement, the provisions of this paragraph shall survive the Closing and any cancellation or termination of this Agreement, and Purchaser's indemnity and liability for damages related to such inspection or investigation shall not be limited to the amount of the Deposit, which Deposit may be withheld in whole or in part to apply against damages arising from such inspection or investigation. Purchaser or any persons retained by Purchaser shall have at a minimum \$1,000,000.00 worth of liability insurance and prior to entry shall cause Seller to be named as an additional insured on such insurance.

**22. Escrow Agent.** The Escrow Agent shall not be liable for any actions taken in good faith, but only for its gross or willful negligence. The parties hereby indemnify and hold the Escrow Agent harmless from and against any loss, liability, claim or damage whatsoever (including reasonable attorney's fees and court costs at trial and all appellate levels) the Escrow Agent may incur or be exposed to in its capacity as escrow agent hereunder except for gross negligence or willful misconduct. If there be any dispute as to disposition of any proceeds held by the Escrow Agent pursuant to the terms of this Agreement, the Escrow Agent is hereby authorized to interplead said amount or the entire proceeds with any court of competent jurisdiction and thereby be released from all obligations hereunder.

**23. Notices.** Any notices required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been given if delivered by hand, sent by recognized overnight courier (such as Federal Express), mailed by certified or registered mail, return receipt requested, in a postage prepaid envelope, or sent via facsimile with confirmation receipt or via e-mail, and addressed as follows:

If to the Purchaser at: MEDALIST RESTAURANT  
GROUP, LLC  
1700 E Las Olas Blvd. #206  
Fort Lauderdale, FL 33301  
Attention: James J. Hurchalla

With a copy to: James J. Hurchalla  
1700 E. Las Olas Blvd. #206  
Ft. Lauderdale, Fl. 33301  
Attn: James Hurchalla  
[jhurch@jjhpa.com](mailto:jhurch@jjhpa.com)  
Phone: 954-462-8240

If to the Seller at: Stephen Bock, Manager  
TVC Margate Co., LLC  
5757 West Maple, Suite 800  
West Bloomfield, MI 48322  
Phone: 248-851-0100  
Email: [sbock@velmeir.com](mailto:sbock@velmeir.com)

With a copy to: Gary August  
Zousmer, August & Caldwell, P.C.  
32255 Northwestern Highway,  
Suite 225  
Farmington Hills, MI 48334  
[gaugust@zacfirm.com](mailto:gaugust@zacfirm.com)

If to the Escrow Agent: James J. Hurchalla & Associates,  
PA  
1700 E Las Olas Blvd. #206  
Fort Lauderdale, FL 33301  
[jhurch@jjhpa.com](mailto:jhurch@jjhpa.com)

Notices personally delivered, sent by email with evidence of being properly sent or sent by overnight courier shall be deemed given on the date of delivery and notices mailed in accordance with the foregoing shall be deemed given three (3) days after deposit in the U.S. mail.

**24. Risk of Loss.** The Property shall be conveyed to Purchaser in the same condition as on the date of this Agreement, ordinary wear and tear excepted, free of all tenancies or occupancies and Seller shall not remove anything from the Property between the Effective Date and Closing. In the event that the Property or any portion thereof is taken by eminent domain prior to Closing, Purchaser shall have the option of either: (i) terminating this

Agreement and receiving a refund of the Deposit (and, if the Deposit is in Escrow Agent's possession, all interest earned thereon), whereupon both parties shall be relieved of all further obligations under this Agreement, except those obligations specifically stated to survive herein, or (ii) Purchaser may proceed with Closing in which case Purchaser shall be entitled to all condemnation awards and settlements.

**25. Miscellaneous.**

- (a) This Agreement shall be construed and governed in accordance with the laws of the State of Florida. Venue shall be exclusively in the County where the Realty is located. All of the parties to this Agreement have participated fully in the negotiation and preparation hereof; and, accordingly, this Agreement shall not be more strictly construed against any one of the parties hereto.
- (b) In the event any term or provision of this Agreement be determined by appropriate judicial authority to be illegal or otherwise invalid, such provision shall be given its nearest legal meaning or be construed as deleted as such authority determines, and the remainder of this Agreement shall be construed to be in full force and effect.
- (c) In the event of any litigation between the parties under this Agreement, the substantially prevailing party shall be awarded its reasonable attorney's fees and court costs at all trial and appellate levels. The provisions of this subparagraph shall survive the Closing co-extensively with other surviving provisions of this Agreement.
- (d) In construing this Agreement, the singular shall be held to include the plural, the plural shall include the singular, the use of any gender shall include every other and all genders, and captions and paragraph headings shall be disregarded.
- (e) All of the exhibits attached to this Agreement, if any, are incorporated in, and made a part of, this Agreement.
- (f) Time shall be of the essence for each and every provision hereof and all time periods shall be calculated in business days. If any date upon which, or by which, action required under this Agreement is a Saturday, Sunday or legal holiday recognized by the Federal government, then the date for such action shall be extended to the first day that is after such date and is not a Saturday, Sunday or legal holiday recognized by the Federal government.
- (g) To the extent an action hereunder requires the consent of a Party, unless otherwise specified such consent shall be subject to a standard of reasonableness and shall not be unreasonably withheld, conditioned or delayed.

**26. Entire Agreement.** This Agreement constitutes the entire agreement between the parties and there are no other agreements, representations or warranties other than as set forth herein. This Agreement may not be changed, altered or modified except by an instrument in writing signed by the party against whom enforcement of such change would be sought. This Agreement shall be binding upon the parties hereto and their respective successors and assigns.

**27. Effective Date.** The Effective Date of this Agreement (the "Effective Date") shall be the date when the last one of Seller or Purchaser has signed this Agreement.

**28. Offer and Acceptance.** Execution of this Agreement by Purchaser shall constitute an offer to purchase the Property, subject to acceptance at Seller's option, which acceptance shall be deemed to have occurred only if Seller shall have delivered to Purchaser at least one counterpart of this Agreement, properly executed by Seller on or before the end of the fifth (5th) day of receipt of Purchaser's offer.

**29. Limitation on Liability.** Notwithstanding anything to the contrary contained herein, after the Closing: (a) the maximum aggregate liability of Seller, and the maximum aggregate amount which may be awarded to and collected by Purchaser (including, without limitation, for any breach of any representation, warranty and/or covenant by Seller) in connection with the Property and/or the sale thereof to Purchaser including, without limitation, under this Agreement or any documents executed pursuant hereto or in connection herewith, including, without limitation, the deed (the form of which shall be a [Personal Representative's Deed in accordance with custom and practice for the transfer of real property by a deceased person's estate, and any other documents associated herewith (collectively, the "Other Documents"), shall be governed by paragraph 13.

**30. Assignment.** This Agreement shall be binding on and shall inure to the benefit of the parties to it and their respective successors and assigns. Upon five (5) business days' notice to Seller, Purchaser may, without the consent of Seller, assign and transfer its rights under this Agreement to one or more entities that are affiliates of Purchaser. For purposes hereof, an "affiliate" of the Purchaser shall mean (i) an entity which controls Purchaser or is controlled by Purchaser, and (ii) an entity that is majority owned by Purchaser or Purchaser's parent. Except as set forth in the immediately preceding two sentences, Purchaser may not assign or transfer its rights or obligations under this Agreement without the prior written consent of the Seller. In the event of any approved or permitted assignment or transfer, the assignee shall be required to expressly assume in writing all of Purchaser's obligations hereunder. In the event of any assignment Purchaser shall remain liable under this Agreement following such assignment. Without limiting and notwithstanding the above, in no event shall Purchaser have the right to assign its rights or obligations hereunder to any party which could not make the representation and warranty contained in subsections 17(e) and (g) above, and in connection with any assignment pursuant to the terms hereof, the assignee shall reconfirm in a written instrument acceptable to Seller and delivered to Seller prior to the effective date of the assignment all representations and warranties as applied to the assignee and that all other terms and conditions of this Agreement shall apply to such assignee and are being assumed by assignee. Seller may freely assign this Agreement without the consent of Purchaser.

**31. Condemnation.** If by reason of fire or other casualty, a Building shall be damaged or destroyed, Seller agrees to assign to Purchaser any right, title and interest Seller may have in and to proceeds relating to any such condemnation.

**32. Non-Profit Partner.**

33. **Casualty Insurance Proceeds.** Prior to Closing, the risk of loss shall remain with Seller. If, prior to Closing, the Property or any part thereof shall be condemned, destroyed or damaged by fire or other casualty, Seller shall promptly notify Purchaser and that Seller hereby agrees that upon the Closing, Seller shall assign to Purchaser any right of Seller to receive insurance proceeds, if any, as a result of any such damage or destruction, less any sums expended by Seller toward the restoration or repair of the Property or in collecting such insurance proceeds or condemnation awards.

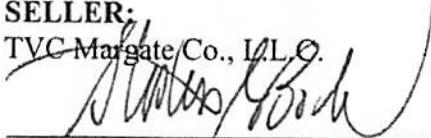
34. Seller or Purchaser may elect to participate in a 1031 Exchange pursuant to the Internal Revenue Code, provided the each party so electing to participate in such exchange shall be responsible for all costs associated with its 1031 Exchange.

Signatures Continued On Next Page



EXECUTED as of the date first above written in several counterparts, each of which shall be deemed an original, but all constituting only one agreement,

Date: April 12, 2018

**SELLER:**  
TVC Margate Co., ILL. O.  


Print Name: Stephen J, Bock, Manager

Date: 4-12-2018

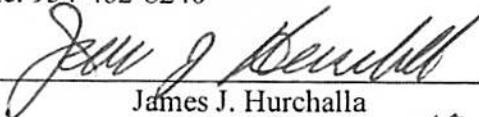
**PURCHASER:**  


Eric Pierce ERIC PIERCE  
Print Name

**RECEIPT**

The undersigned Escrow Agent hereby acknowledges receipt of a check, subject to clearance, in the amount of Ten Thousand Dollars (\$10,000.00) to be held as the Initial Deposit pursuant to the foregoing Agreement.

**ESCROW AGENT:**  
James J. Hurchalla  
1700 E. Las Olas Blvd . #206  
Ft. Lauderdale, Fl. 33301  
jhurch@bellsouth.com  
Phone: 954-462-8240

By:   
James J. Hurchalla

Date: 4-12-2018

EXHIBIT "A"

Legal Description of Realty Attached

*Handwritten initials and signature*

# LEGAL DESCRIPTION

EXHIBIT ~~A~~  
REMAINDER PROPERTY

SECTION 30, TOWNSHIP 48 SOUTH, RANGE 42 EAST  
PARENT PARCEL FOLIO#: 4842-30-05-0010  
PURPOSE: REMAINDER PARCEL

**LEGAL DESCRIPTION:** REMAINDER PARCEL (BY SURVEYOR)

SHEET 1 OF 2  
NOT VALID WITHOUT SHEET 2 OF 2  
THIS IS NOT A SURVEY

TRACT A, MARGATE DISTRICT HEADQUARTERS, ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK 88, PAGE 14, OF THE PUBLIC RECORDS OF BROWARD COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGIN AT THE NORTHEAST CORNER OF SAID TRACT A; THENCE SOUTH 01°10'00" EAST ALONG THE EAST LINE OF SAID TRACT A AND THE WEST RIGHT OF WAY LINE OF N.W. 55TH AVENUE, FOR A DISTANCE OF 250.00 FEET TO THE SOUTH LINE OF SAID TRACT A;

THENCE SOUTH 89°32'02" WEST, ALONG SAID SOUTH LINE, FOR A DISTANCE OF 293.69 FEET TO A POINT;

THENCE NORTH 00°26'58" WEST, FOR A DISTANCE OF 250.07 FEET TO THE NORTH LINE OF SAID TRACT A AND THE SOUTH RIGHT OF WAY LINE OF COPANS ROAD;

THENCE NORTH 89°33'02" EAST, ALONG SAID NORTH LINE OF TRACT A AND SOUTH RIGHT OF WAY LINE OF COPANS ROAD, FOR A DISTANCE OF 293.69 FEET TO THE POINT OF BEGINNING.

CONTAINING 1.68 ACRES MORE OR LESS.

**SURVEYOR'S NOTES:**

- THIS IS A LEGAL DESCRIPTION WITH A SKETCH AS DEFINED IN CHAPTER 5J-17, FLORIDA ADMINISTRATIVE CODE. SAID SURVEY MEETS THE "STANDARDS OF PRACTICE" FOR SURVEYING AND MAPPING, AS SET FORTH BY THE FLORIDA BOARD OF PROFESSIONAL SURVEYORS AND MAPPERS IN CHAPTER 5J-17, FLORIDA ADMINISTRATIVE CODE, PURSUANT TO SECTION 472.027, FLORIDA STATUTES.
- THE BEARINGS SHOWN HEREON ARE BASED UPON THE NORTH AMERICAN DATUM 1983, 2011 ADJUSTMENT, FLORIDA STATE PLANE COORDINATE SYSTEM, EAST ZONE. THIS REFERENCE WAS ESTABLISHED BY USING TOPCON GR5 RECEIVERS WITH THE TRIMBLE VRN (VIRTUAL REFERENCE NETWORK) AND TIED TO THE FLORIDA DEPARTMENT OF TRANSPORTATION (FDOT) NETWORK CONTROL FOR STATE ROAD 7 AS DEPICTED ON A SPECIFIC PURPOSE SURVEY, FDOT PROJECT ID 230012-1-32-04. MORE PARTICULARLY THE SOUTH LINE OF THE SUBJECT PARCEL BEARS SOUTH 89°32'02" WEST AS SHOWN. THIS LEGAL DESCRIPTION AND SKETCH IS NOT VALID WITHOUT THE SIGNATURE AND RAISED SEAL OF A FLORIDA LICENSED SURVEYOR AND MAPPER.
- ADDITIONS OR DELETIONS TO THIS SURVEY MAP OR REPORT BY OTHER THAN THE SIGNING PARTY OR PARTIES IS PROHIBITED WITHOUT THE WRITTEN CONSENT OF THE SIGNING PARTY OR PARTIES.

TO: BROWARD COUNTY  
TVC MARGATE CO., L.L.C.

THIS "LEGAL DESCRIPTION & SKETCH" COMPLIES WITH THE STANDARDS OF PRACTICE SET FORTH IN RULE 5J-17 OF THE FLORIDA ADMINISTRATIVE CODE AND BREVARD COUNTY PUBLIC WORKS FINANCE & CONTRACTS ADMINISTRATION CHECKLIST.

DATE OF LAST FIELDWORK: JUNE 12, 2015

**PREPARED FOR AND CERTIFY TO:**

BROWARD COUNTY  
TVC MARGATE CO., L.L.C.

KURT STAFFLINGER  
FLORIDA SURVEYOR AND MAPPER  
REGISTRATION No. 5496  
NOT VALID UNLESS SIGNED AND SEALED

**PREPARED BY:**



Bowman Consulting Group, Ltd. Phone: (321) 255-5434  
4450 W EAU GALLIE BLVD, Suite 232 Fax (321) 255-7751  
MELBOURNE, FL 32934 www.bowmanconsulting.com

Florida Certificate of Authorization No. LB8030

DRAWN BY: RT	CHECKED BY: KS	PROJECT NO. 8536-01-001			SECTION 30 TOWNSHIP 48 SOUTH RANGE 42 EAST
		REVISIONS	2/14/17	PER COMMENTS	
			2/15/17	PER COMMENTS	
DATE: 10/14/16	DRAWING: 8536-A-BP PARCEL LEGALS		2/29/17	PER COMMENTS	

*WJF*

# SKETCH OF DESCRIPTION

SECTION 30, TOWNSHIP 48 SOUTH, RANGE 42 EAST  
 PARENT PARCEL FOLIO#: 4842-30-05-0010  
 PURPOSE: REMAINDER PARCEL

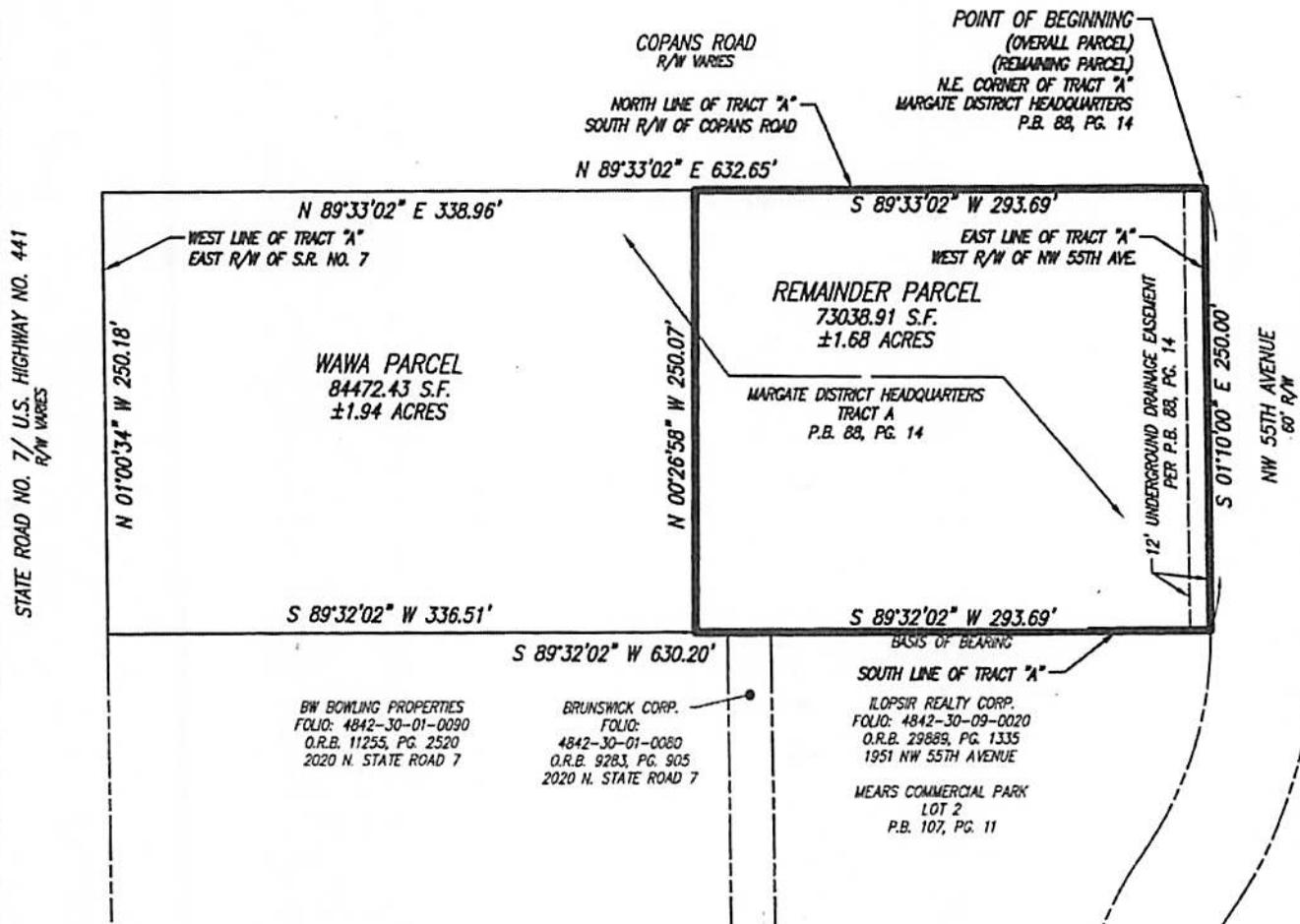


EXHIBIT ~~A~~  
 REMAINDER PARCEL

SHEET 2 OF 2  
 NOT VALID WITHOUT SHEET 1 OF 2  
THIS IS NOT A SURVEY

ABBREVIATIONS:

FDOT FLORIDA DEPARTMENT OF  
 TRANSPORTATION  
 ID IDENTIFICATION  
 LB LICENSED BUSINESS  
 NAD NORTH AMERICAN DATUM  
 O.R.B. OFFICIAL RECORDS BOOK  
 P.B. PLAT BOOK  
 PG. PAGE  
 R/W RIGHT OF WAY  
 S.F. SQUARE FEET  
 S.R. STATE ROAD



PREPARED BY:

**Bowman**  
**CONSULTING**  
 Bowman Consulting Group, Ltd.  
 4450 W EAU GALLIE BLVD, Suite 232  
 MELBOURNE, FL 32934

Phone: (321) 255-5434  
 Fax: (321) 255-7751  
 www.bowmanconsulting.com

SCALE:

1" = 100'

PROJECT NO.:

8536-01-001

SECTION 30  
 TOWNSHIP 48 SOUTH  
 RANGE 42 EAST

621

## FIFTH AMENDMENT TO PURCHASE AND SALE AGREEMENT

THIS FIFTH AMENDMENT TO PURCHASE AND SALE AGREEMENT (the "Amendment") is made and entered into to be effective as of March 29, 2019, by and between TVC MARGATE CO., L.L.C. (hereinafter called "Seller"), and MEDALIST RESTAURANT GROUP, LLC. (hereinafter called "Purchaser").

WHEREAS, Seller and Purchaser entered into that certain Purchase and Sale Agreement dated April 12, 2018 as amended from time to time including the First Amendment to Purchase and Sale Agreement dated as of December 12, 2018 (the "First Amendment"); Second Amendment to Purchase and Sale Agreement dated as of January 7, 2019 (the "Second Amendment"); Third Amendment to Purchase and Sale Agreement dated as of January 28, 2019 (the "Third Amendment") and Fourth Amendment to Purchase and Sale Agreement dated February 27, 2019 (the "Fourth Amendment") all of which are collectively referred to herein as the "Agreement") for the purchase and sale of a real property comprised of approximately 1.68 acres located in Broward County, Florida, with a Parcel ID of 4842-30-05-0010, and as more particularly described in the Agreement (the "Property"); and

WHEREAS, Seller and Purchaser desire to amend the Agreement in certain respects to address various matters as set forth below.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Seller and Purchaser agree that the Agreement is hereby amended as follows:

1. Purchase Price. Section 2 of the Purchase and Sale Agreement is amended by modifying the purchase price to be paid by Purchaser to Seller at Closing from One Million Five Hundred Thousand Dollars (\$1,500,000.00) to One Million Three Hundred Twenty-Five Thousand Dollars (\$1,325,000.00).

2. Section 7 (c) of the Agreement is hereby modified as follows:

"Notwithstanding anything to the contrary in the Agreement, Seller and Purchaser hereby agree that the Permitting Period is hereby extended for the First Permitting Period extension to April 12, 2019 (in lieu of March 29, 2019)." The parties intend by this modification to have the First Permit Period Extension expire April 12, 2019, and no additional deposits be due until Purchaser elects to extend the Permitting Period by its election for a second extension beyond April 12, 2019, as provided for in the Agreement as amended herein.

3. Section 35: "New Drainage Pipe" as found in the First Amendment is modified as follows:

The third sentence reading "In the event Seller fails to complete the installation of the new drainage system by April 2, 2019, Purchaser may terminate this Agreement and receive a full refund of its deposits including such deposits as are identified as non-refundable." is deleted and replaced with the following "In the event Seller fails to complete the installation of the new drainage system by July 15, 2019, Purchaser may terminate this Agreement and receive a full refund of its deposits including such deposits as are identified as non-refundable."

The balance of Section 35 after the third sentence as modified above is hereby deleted. The parties acknowledge that they have discussed the drainage issue and the costs that Buyer may incur as a result of the drainage issue and agreed to compromise in the form of a reduction of the purchase price as provided in Section 1 of this Amendment. The purchase price reduction shall be and is a compromise of the costs associated with what Buyer may incur and is intended as settlement and compromise whereby neither party shall have any claim against the other arising from the drainage issues and the corrective action being taken by Seller pursuant to the plans and specifications approved by the City of Margate and Broward County (the "Plans and Specifications"). Seller has not made any representation regarding the drainage issue and its only obligation is to remediate the matter per the Plans and Specifications.

3. Capitalized terms used herein shall have the same meaning as in the Agreement unless otherwise defined herein.
4. Except as otherwise provided in this Amendment, all other terms and provisions of the Agreement are ratified and confirmed and shall remain in full force and effect as written therein.
5. This Amendment may be executed in multiple counterparts, each of which when combined will constitute one and the same agreement. This Amendment may be executed and transmitted electronically, including by facsimile or electronic mail, and such signatures shall be binding and shall have the same force and effect as an original signature for all purposes.

IN WITNESS WHEREOF, the parties hereto have executed this Fourth Amendment as of the day and year first above written.

Seller

TVC MARGATE CO., L.L.C.



By: Stephen J. Bock *4-1-2019*  
Its: Manager

Purchaser:

MEDALIST RESTAURANT GROUP, LLC



By: Eric Pierce  
Its: (Insert Title) MANAGER

THIS DOCUMENT PREPARED BY  
AND SHOULD BE RETURNED TO:

Jason W. Searl, Esq.  
Gray-Robinson, P.A.  
301 East Pine Street, Suite 1400  
Orlando, FL 32801

**SPECIAL WARRANTY DEED**

**THIS SPECIAL WARRANTY DEED** is made this 20 day of October, 2016, between **VICJ CORPORATE PLAZA LLC**, a Florida limited liability company, whose address for purposes of this Warranty Deed is 2000 North State Road 7, Margate, Florida 33063, hereinafter called the **GRANTOR**, and **TVC MARGATE CO., L.L.C.**, a Michigan limited liability company, whose address is 5757 West Maple Road, Suite 80 West Bloomfield, Michigan 48322, hereinafter called the **GRANTEE**.

**WITNESSETH**, that the **GRANTOR**, for and in consideration of the sum of **TEN AND NO/100 DOLLARS (\$10.00)** and other good and valuable considerations to **GRANTOR** in hand paid by the **GRANTEE**, the receipt of which is hereby acknowledged by these presents, does grant, bargain, sell, release convey and confirm unto the **GRANTEE**, its heirs and assigns forever, all that certain land lying and being in the County of Broward, State of Florida, more particularly described as follows (the "Property"):

**SEE ATTACHED EXHIBIT "A"**

**TOGETHER** with all the tenements, hereditaments and appurtenances thereto belonging or in anywise appertaining.

**TO HAVE AND TO HOLD** the same in fee simple forever.

**AND** the **GRANTOR** hereby covenants with said **GRANTEE** that the **GRANTOR** is lawfully seized of said land in fee simple; that the **GRANTOR** has good right and lawful authority to sell and convey said land; that the **GRANTOR** hereby fully warrants the title to said land and will defend the same against the lawful claims of all persons claiming by, through or under that said **GRANTOR**, save and except only the following, to wit:

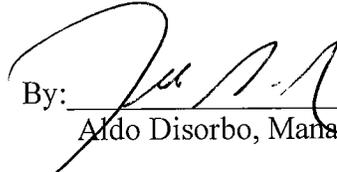
**SEE ATTACHED EXHIBIT "B"**

**IN WITNESS WHEREOF**, the **GRANTOR** has hereunto set her hand and seal the day and year first above written.

Signed, sealed and delivered in our presence:

**VICJ CORPORATE PLAZA LLC**,  
a Florida limited liability company

  
Witness Name: Ellen R. Hill

By:   
Aldo Disorbo, Manager

Witness Name: Russell Williams

**[SIGNATURES CONTINUED ON FOLLOWING PAGE]**

STATE OF FLORIDA  
COUNTY OF BRUWARD

The foregoing instrument was acknowledged before me this 20 day of October, 2016, by Aldo Disorbo, as the Manager of **VICJ CORPORATE PLAZA LLC**, a Florida limited liability company, who [ ] is personally known to me or ~~[ ]~~ has produced a Florida driver's license or \_\_\_\_\_ as identification.

(NOTARY STAMP)

  
Printed Name: Elias R. Hilal  
My Commission Expires: 3/15/19

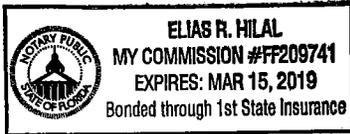


EXHIBIT "A"

Tract A, of MARGATE DISTRICT HEADQUARTERS, according to the Plat thereof, as recorded in Plat Book 88, Page 14 of the Public Records of Broward County, Florida.

**EXHIBIT "B"**

1. Taxes and assessments for the year 2016 and subsequent years, which are not yet due and payable.
2. Easement in favor of Florida Power & Light Company, recorded June 22, 1971 in Official Records Book 4532, Page 26, Public Records of Broward County, Florida.
3. Easements and matters as set forth, shown or reflected on the Plat of MARGATE DISTRICT HEADQUARTERS, recorded in Plat Book 88, Page 14, Public Records of Broward County, Florida.



**OWNER'S POLICY OF TITLE INSURANCE**

Issued by

**FIDELITY NATIONAL TITLE INSURANCE COMPANY**

**Any notice of claim and any other notice or statement in writing required to be given to the Company under this Policy must be given to the Company at the address shown in Section 18 of the Conditions.**

**COVERED RISKS**

SUBJECT TO THE EXCLUSIONS FROM COVERAGE, THE EXCEPTIONS FROM COVERAGE CONTAINED IN SCHEDULE B, AND THE CONDITIONS, FIDELITY NATIONAL TITLE INSURANCE COMPANY, a Florida company, (the "Company") insures as of Date of Policy, against loss or damage, not exceeding the Amount of Insurance, sustained or incurred by the Insured by reason of:

1. Title being vested other than as stated in Schedule A.
2. Any defect in or lien or encumbrance on the Title. This Covered Risk includes but is not limited to insurance against loss from
  - (a) A defect in the Title caused by
    - (i) forgery, fraud, undue influence, duress, incompetency, incapacity, or impersonation;
    - (ii) failure of any person or Entity to have authorized a transfer or conveyance;
    - (iii) a document affecting Title not properly created, executed, witnessed, sealed, acknowledged, notarized, or delivered;
    - (iv) failure to perform those acts necessary to create a document by electronic means authorized by law;
    - (v) a document executed under a falsified, expired, or otherwise invalid power of attorney;
    - (vi) a document not properly filed, recorded, or indexed in the Public Records including failure to perform those acts by electronic means authorized by law; or
    - (vii) a defective judicial or administrative proceeding.
  - (b) The lien of real estate taxes or assessments imposed on the Title by a governmental authority due or payable, but unpaid.
  - (c) Any encroachment, encumbrance, violation, variation, or adverse circumstance affecting the Title that would be disclosed by an accurate and complete land survey of the Land. The term "encroachment" includes encroachments of existing improvements located on the Land onto adjoining land, and encroachments onto the Land of existing improvements located on adjoining land.
3. Unmarketable Title.
4. No right of access to and from the Land.
5. The violation or enforcement of any law, ordinance, permit, or governmental regulation (including those relating to building and zoning) restricting, regulating, prohibiting, or relating to
  - (a) the occupancy, use, or enjoyment of the Land;
  - (b) the character, dimensions, or location of any improvement erected on the Land;
  - (c) the subdivision of land; or
  - (d) environmental protectionif a notice, describing any part of the Land, is recorded in the Public Records setting forth the violation or intention to enforce, but only to the extent of the violation or enforcement referred to in that notice.
6. An enforcement action based on the exercise of a governmental police power not covered by Covered Risk 5 if a notice of the enforcement action, describing any part of the Land, is recorded in the Public Records, but only to the extent of the enforcement referred to in that notice.
7. The exercise of the rights of eminent domain if a notice of the exercise, describing any part of the Land, is recorded in the Public Records.
8. Any taking by a governmental body that has occurred and is binding on the rights of a purchaser for value without Knowledge.
9. Title being vested other than as stated Schedule A or being defective
  - (a) as a result of the avoidance in whole or in part, or from a court order providing an alternative remedy, of a transfer of all or any part of the title to or any interest in the Land occurring prior to the transaction vesting Title as shown in Schedule A because that prior transfer constituted a fraudulent or preferential transfer under federal bankruptcy, state insolvency, or similar creditors' rights laws; or

(b) because the instrument of transfer vesting Title as shown in Schedule A constitutes a preferential transfer under federal bankruptcy, state insolvency, or similar creditors' rights laws by reason of the failure of its recording in the Public Records

(i) to be timely, or

(ii) to impart notice of its existence to a purchaser for value or to a judgment or lien creditor.

10. Any defect in or lien or encumbrance on the Title or other matter included in Covered Risks 1 through 9 that has been created or attached or has been filed or recorded in the Public Records subsequent to Date of Policy and prior to the recording of the deed or other instrument of transfer in the Public Records that vests Title as shown in Schedule A.

The Company will also pay the costs, attorneys' fees, and expenses incurred in defense of any matter insured against by this Policy, but only to the extent provided in the Conditions.

IN WITNESS WHEREOF, FIDELITY NATIONAL TITLE INSURANCE COMPANY has caused this policy to be signed and sealed by its duly authorized officers.

FIDELITY NATIONAL TITLE INSURANCE COMPANY

Countersigned:

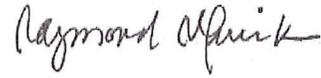


By: \_\_\_\_\_  
Authorized Officer or Agent

GrayRobinson, PA  
301 E Pine St Suite 1400  
PO Box 3068  
Orlando, FL 32802  
Tel:407-843-8880  
Fax:407-244-5690



By:



President

Attest:



Secretary



## EXCLUSIONS FROM COVERAGE

The following matters are expressly excluded from the coverage of this policy, and the Company will not pay loss or damage, costs, attorneys' fees, or expenses that arise by reason of:

1. (a) Any law, ordinance, permit, or governmental regulation (including those relating to building and zoning) restricting, regulating, prohibiting, or relating to
  - (i) the occupancy, use, or enjoyment of the Land;
  - (ii) the character, dimensions or location of any improvement erected on the Land;
  - (iii) the subdivision of land; or
  - (iv) environmental protection;or the effect of any violation of these laws, ordinances, or governmental regulations. This Exclusion 1(a) does not modify or limit the coverage provided under Covered Risk 5.
- (b) Any governmental police power. This Exclusion 1(b) does not modify or limit the coverage provided under Covered Risk 6.
2. Rights of eminent domain. This Exclusion does not modify or limit the coverage provided under Covered Risk 7 or 8.
3. Defects, liens, encumbrances, adverse claims, or other matters:
  - (a) created, suffered, assumed, or agreed to by the Insured Claimant;
  - (b) not Known to the Company, not recorded in the Public Records at Date of Policy, but Known to the Insured Claimant and not disclosed in writing to the Company by the Insured Claimant prior to the date the Insured Claimant became an Insured under this policy;
  - (c) resulting in no loss or damage to the Insured Claimant;
  - (d) attaching or created subsequent to Date of Policy; or
  - (e) resulting in loss or damage that would not have been sustained if the Insured Claimant had paid value for the Title.
4. Any claim, by reason of the operation of federal bankruptcy, state insolvency, or similar creditors' rights laws, that the transaction vesting the Title as shown in Schedule A, is
  - (a) a fraudulent conveyance or fraudulent transfer; or
  - (b) a preferential transfer for any reason not stated in Covered Risk 9 of this policy.
5. Any lien on the Title for real estate taxes or assessments imposed by governmental authority and created or attaching between Date of Policy and the date of recording of the deed or other instrument of transfer in the Public Records that vests Title as shown in Schedule A.

## CONDITIONS

### 1. DEFINITION OF TERMS

The following terms when used in this policy mean:

(a) "Amount of Insurance": The amount stated in Schedule A, as may be increased or decreased by endorsement to this policy, increased by Section 8(b), or decreased by Sections 10 and 11 of these Conditions.

(b) "Date of Policy": The date designated as "Date of Policy" in Schedule A.

(c) "Entity": A corporation, partnership, trust, limited liability company, or other similar legal entity.

(d) "Insured": The Insured named in Schedule A.

(i) The term "Insured" also includes

(A) successors to the Title of the Insured by operation of law as distinguished from purchase, including heirs, devisees, survivors, personal representatives, or next of kin;

(B) successors to an Insured by dissolution, merger, consolidation, distribution, or reorganization;

(C) successors to an Insured by its conversion to another kind of Entity;

(D) a grantee of an Insured under a deed delivered without payment of actual valuable consideration conveying the Title

(1) if the stock, shares, memberships, or other equity interests of the grantee are wholly-owned by the named Insured,

(2) if the grantee wholly owns the named Insured,

(3) if the grantee is wholly-owned by an affiliated Entity of the named Insured, provided the affiliated Entity and

the named Insured are both wholly-owned by the same person or Entity, or

(4) if the grantee is a trustee or beneficiary of a trust created by a written instrument established by the Insured named in Schedule A for estate planning purposes.

(ii) With regard to (A), (B), (C), and (D) reserving, however, all rights and defenses as to any successor that the Company would have had against any predecessor Insured.

(e) "Insured Claimant": An Insured claiming loss or damage.

(f) "Knowledge" or "Known": Actual knowledge, not constructive knowledge or notice that may be imputed to an Insured by reason of the Public Records or any other records that impart constructive notice of matters affecting the Title.

(g) "Land": The land described in Schedule A, and affixed improvements that by law constitute real property. The term "Land" does not include any property beyond the lines of the area described in Schedule A, nor any right, title, interest, estate, or easement in abutting streets, roads, avenues, alleys, lanes, ways or waterways, but this does not modify or limit the extent that a right of access to and from the Land is insured by this policy.

(h) "Mortgage": Mortgage, deed of trust, trust deed, or other security instrument, including one evidenced by electronic means authorized by law.

(i) "Public Records": Records established under state statutes at Date of Policy for the purpose of imparting constructive notice of matters relating to real property to purchasers for value and without Knowledge. With respect to Covered Risk 5(d), "Public Records" shall also include



environmental protection liens filed in the records of the clerk of the United States District Court for the district where the Land is located.

(j) "Title": The estate or interest described in Schedule A.

(k) "Unmarketable Title": Title affected by an alleged or apparent matter that would permit a prospective purchaser or lessee of the Title or lender on the Title to be released from the obligation to purchase, lease, or lend if there is a contractual condition requiring the delivery of marketable title.

### **2. CONTINUATION OF INSURANCE**

The coverage of this policy shall continue in force as of Date of Policy in favor of an Insured, but only so long as the Insured retains an estate or interest in the Land, or holds an obligation secured by a purchase money Mortgage given by a purchaser from the Insured, or only so long as the Insured shall have liability by reason of warranties in any transfer or conveyance of the Title. This policy shall not continue in force in favor of any purchaser from the Insured of either (i) an estate or interest in the Land, or (ii) an obligation secured by a purchase money Mortgage given to the Insured.

### **3. NOTICE OF CLAIM TO BE GIVEN BY INSURED CLAIMANT**

The Insured shall notify the Company promptly in writing (i) in case of any litigation as set forth in Section 5(a) of these Conditions, (ii) in case Knowledge shall come to an Insured hereunder of any claim of title or interest that is adverse to the Title, as insured, and that might cause loss or damage for which the Company may be liable by virtue of this policy, or (iii) if the Title, as insured, is rejected as Unmarketable Title. If the Company is prejudiced by the failure of the Insured Claimant to provide prompt notice, the Company's liability to the Insured Claimant under the policy shall be reduced to the extent of the prejudice.

### **4. PROOF OF LOSS**

In the event the Company is unable to determine the amount of loss or damage, the Company may, at its option, require as a condition of payment that the Insured Claimant furnish a signed proof of loss. The proof of loss must describe the defect, lien, encumbrance, or other matter insured against by this policy that constitutes the basis of loss or damage and shall state, to the extent possible, the basis of calculating the amount of the loss or damage.

### **5. DEFENSE AND PROSECUTION OF ACTIONS**

(a) Upon written request by the Insured, and subject to the options contained in Section 7 of these Conditions, the Company, at its own cost and without unreasonable delay, shall provide for the defense of an Insured in litigation in which any third party asserts a claim covered by this policy adverse to the Insured. This obligation is limited to only those stated causes of action alleging matters insured against by this policy. The Company shall have the right to select counsel of its choice (subject to the right of the Insured to object for reasonable cause) to represent the Insured as to those stated causes of action. It shall not be liable for and will not pay the fees of any other counsel. The Company will not pay any fees, costs, or expenses incurred by the Insured in the defense of those causes of action that allege matters not insured against by this policy.

(b) The Company shall have the right, in addition to the options contained in Section 7 of these Conditions, at its own cost, to institute and prosecute any action or proceeding or to do any other act that in its opinion may be necessary or desirable to establish the Title, as insured, or to prevent or reduce loss or damage to the Insured. The Company may take

any appropriate action under the terms of this policy, whether or not it shall be liable to the Insured. The exercise of these rights shall not be an admission of liability or waiver of any provision of this policy. If the Company exercises its rights under this subsection, it must do so diligently.

(c) Whenever the Company brings an action or asserts a defense as required or permitted by this policy, the Company may pursue the litigation to a final determination by a court of competent jurisdiction, and it expressly reserves the right, in its sole discretion, to appeal any adverse judgment or order.

### **6. DUTY OF INSURED CLAIMANT TO COOPERATE**

(a) In all cases where this policy permits or requires the Company to prosecute or provide for the defense of any action or proceeding and any appeals, the Insured shall secure to the Company the right to so prosecute or provide defense in the action or proceeding, including the right to use, at its option, the name of the Insured for this purpose. Whenever requested by the Company, the Insured, at the Company's expense, shall give the Company all reasonable aid (i) in securing evidence, obtaining witnesses, prosecuting or defending the action or proceeding, or effecting settlement, and (ii) in any other lawful act that in the opinion of the Company may be necessary or desirable to establish the Title, or any other matter as insured. If the Company is prejudiced by the failure of the Insured to furnish the required cooperation, the Company's obligations to the Insured under the policy shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation, with regard to the matter or matters requiring such cooperation.

(b) The Company may reasonably require the Insured Claimant to submit to examination under oath by any authorized representative of the Company and to produce for examination, inspection, and copying, at such reasonable times and places as may be designated by the authorized representative of the Company, all records, in whatever medium maintained, including books, ledgers, checks, memoranda, correspondence, reports, e-mails, disks, tapes, and videos whether bearing a date before or after Date of Policy, that reasonably pertain to the loss or damage. Further, if requested by any authorized representative of the Company, the Insured Claimant shall grant its permission, in writing, for any authorized representative of the Company to examine, inspect, and copy all of these records in the custody or control of a third party that reasonably pertain to the loss or damage. All information designated as confidential by the Insured Claimant provided to the Company pursuant to this Section shall not be disclosed to others unless, in the reasonable judgment of the Company, it is necessary in the administration of the claim. Failure of the Insured Claimant to submit for examination under oath, produce any reasonably requested information, or grant permission to secure reasonably necessary information from third parties as required in this subsection, unless prohibited by law or governmental regulation, shall terminate any liability of the Company under this policy as to that claim.

### **7. OPTIONS TO PAY OR OTHERWISE SETTLE CLAIMS; TERMINATION OF LIABILITY**

In case of a claim under this policy, the Company shall have the following additional options:

(a) To Pay or Tender Payment of the Amount of Insurance.

To pay or tender payment of the Amount of Insurance under this policy together with any costs, attorneys' fees, and expenses incurred by the Insured Claimant that were



authorized by the Company up to the time of payment or tender of payment and that the Company is obligated to pay.

Upon the exercise by the Company of this option, all liability and obligations of the Company to the Insured under this policy, other than to make the payment required in this subsection, shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation.

(b) To Pay or Otherwise Settle With Parties Other Than the Insured or With the Insured Claimant.

(i) To pay or otherwise settle with other parties for or in the name of an Insured Claimant any claim insured against under this policy. In addition, the Company will pay any costs, attorneys' fees, and expenses incurred by the Insured Claimant that were authorized by the Company up to the time of payment and that the Company is obligated to pay; or

(ii) To pay or otherwise settle with the Insured Claimant the loss or damage provided for under this policy, together with any costs, attorneys' fees, and expenses incurred by the Insured Claimant that were authorized by the Company up to the time of payment and that the Company is obligated to pay.

Upon the exercise by the Company of either of the options provided for in subsections (b)(i) or (ii), the Company's obligations to the Insured under this policy for the claimed loss or damage, other than the payments required to be made, shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation.

#### **8. DETERMINATION AND EXTENT OF LIABILITY**

This policy is a contract of indemnity against actual monetary loss or damage sustained or incurred by the Insured Claimant who has suffered loss or damage by reason of matters insured against by this policy.

(a) The extent of liability of the Company for loss or damage under this policy shall not exceed the lesser of

(i) the Amount of Insurance; or

(ii) the difference between the value of the Title as insured and the value of the Title subject to the risk insured against by this policy.

(b) If the Company pursues its rights under Section 5 of these Conditions and is unsuccessful in establishing the Title, as insured,

(i) the Amount of Insurance shall be increased by 10%, and

(ii) the Insured Claimant shall have the right to have the loss or damage determined either as of the date the claim was made by the Insured Claimant or as of the date it is settled and paid.

(c) In addition to the extent of liability under (a) and (b), the Company will also pay those costs, attorneys' fees, and expenses incurred in accordance with Sections 5 and 7 of these Conditions.

#### **9. LIMITATION OF LIABILITY**

(a) If the Company establishes the Title, or removes the alleged defect, lien or encumbrance, or cures the lack of a right of access to or from the Land, or cures the claim of Unmarketable Title, all as insured, in a reasonably diligent manner by any method, including litigation and the completion of any appeals, it shall have fully performed its obligations with respect to that matter and shall not be liable for any loss or damage caused to the Insured.

(b) In the event of any litigation, including litigation by the Company or with the Company's consent, the Company shall have no liability for loss or damage until there has been a final

determination by a court of competent jurisdiction, and disposition of all appeals, adverse to the Title, as insured.

(c) The Company shall not be liable for loss or damage to the Insured for liability voluntarily assumed by the Insured in settling any claim or suit without the prior written consent of the Company.

#### **10. REDUCTION OF INSURANCE; REDUCTION OR TERMINATION OF LIABILITY**

All payments under this policy, except payments made for costs, attorneys' fees, and expenses, shall reduce the Amount of Insurance by the amount of the payment.

#### **11. LIABILITY NONCUMULATIVE**

The Amount of Insurance shall be reduced by any amount the Company pays under any policy insuring a Mortgage to which exception is taken in Schedule B or to which the Insured has agreed, assumed, or taken subject, or which is executed by an Insured after Date of Policy and which is a charge or lien on the Title, and the amount so paid shall be deemed a payment to the Insured under this policy.

#### **12. PAYMENT OF LOSS**

When liability and the extent of loss or damage have been definitely fixed in accordance with these Conditions, the payment shall be made within 30 days.

#### **13. RIGHTS OF RECOVERY UPON PAYMENT OR SETTLEMENT**

(a) Whenever the Company shall have settled and paid a claim under this policy, it shall be subrogated and entitled to the rights of the Insured Claimant in the Title and all other rights and remedies in respect to the claim that the Insured Claimant has against any person or property, to the extent of the amount of any loss, costs, attorneys' fees, and expenses paid by the Company. If requested by the Company, the Insured Claimant shall execute documents to evidence the transfer to the Company of these rights and remedies. The Insured Claimant shall permit the Company to sue, compromise, or settle in the name of the Insured Claimant and to use the name of the Insured Claimant in any transaction or litigation involving these rights and remedies.

If a payment on account of a claim does not fully cover the loss of the Insured Claimant, the Company shall defer the exercise of its right to recover until after the Insured Claimant shall have recovered its loss.

(b) The Company's right of subrogation includes the rights of the Insured to indemnities, guaranties, other policies of insurance, or bonds, notwithstanding any terms or conditions contained in those instruments that address subrogation rights.

#### **14. ARBITRATION**

Unless prohibited by applicable law, arbitration pursuant to the Title Insurance Arbitration Rules of the American Arbitration Association may be demanded if agreed to by both the Company and the Insured at the time of a controversy or claim. Arbitrable matters may include, but are not limited to, any controversy or claim between the Company and the Insured arising out of or relating to this policy, and service of the Company in connection with its issuance or the breach of a policy provision or other obligation. Arbitration pursuant to this policy and under the Rules in effect on the date the demand for arbitration is made or, at the option of the Insured, the Rules in effect at Date of Policy shall be binding upon the parties. The award may include attorneys' fees only if the laws of the state in which the Land is located permit a court to award attorneys' fees to a prevailing party. Judgment upon the award rendered by the Arbitrator(s) may be entered in any court having jurisdiction thereof.

The law of the situs of the land shall apply to an arbitration under the Title Insurance Arbitration Rules. A copy of the Rules may be obtained from the Company upon request.

**15. LIABILITY LIMITED TO THIS POLICY; POLICY ENTIRE CONTRACT**

(a) This policy together with all endorsements, if any, attached to it by the Company is the entire policy and contract between the Insured and the Company. In interpreting any provision of this policy, this policy shall be construed as a whole.

(b) Any claim of loss or damage that arises out of the status of the Title or by any action asserting such claim shall be restricted to this policy.

(c) Any amendment of or endorsement to this policy must be in writing and authenticated by an authorized person, or expressly incorporated by Schedule A of this policy.

(d) Each endorsement to this policy issued at any time is made a part of this policy and is subject to all of its terms and provisions. Except as the endorsement expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsement, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance.

**16. SEVERABILITY**

In the event any provision of this policy, in whole or in part, is held invalid or unenforceable under applicable law, the policy

shall be deemed not to include that provision or such part held to be invalid, but all other provisions shall remain in full force and effect.

**17. CHOICE OF LAW; FORUM**

(a) Choice of Law: The Insured acknowledges the Company has underwritten the risks covered by this policy and determined the premium charged therefor in reliance upon the law affecting interests in real property and applicable to the interpretation, rights, remedies, or enforcement of policies of title insurance of the jurisdiction where the Land is located.

Therefore, the court or an arbitrator shall apply the law of the jurisdiction where the Land is located to determine the validity of claims against the Title that are adverse to the Insured and to interpret and enforce the terms of this policy. In neither case shall the court or arbitrator apply its conflicts of law principles to determine the applicable law.

(b) Choice of Forum: Any litigation or other proceeding brought by the Insured against the Company must be filed only in a state or federal court within the United States of America or its territories having appropriate jurisdiction.

**18. NOTICES, WHERE SENT**

Any notice of claim and any other notice or statement in writing required to be given to the Company under this policy must be given to the Company at FIDELITY NATIONAL TITLE INSURANCE COMPANY, Attn: Claims Department, P.O. Box 45023, Jacksonville, FL 32232-5023.





*Fidelity National Title Insurance Company*

**POLICY OF TITLE INSURANCE  
SCHEDULE A**

Fidelity National Title Insurance Company

GrayRobinson, P.A.  
301 E. Pine Street, Suite 1400  
Orlando, FL 32801

**Policy Number:** 2730609-210936583

**Order Number:** 5190137  
Customer Reference: 59580-Margate  
**Amount of Insurance:** \$5,800,000.00  
**Premium:** \$16,975.00

**Address Reference:** 2000 N State Rd 7  
Margate, FL 33063 Broward County, FL  
**(for informational purposes only)**

**Date of Policy:** October 21, 2016 at 11:21 AM

1. Name of Insured:  
TVC Margate Co., L.L.C., a Michigan limited liability company
2. The estate or interest in the Land that is insured by this policy is:  
Fee Simple
3. Title is vested in:  
TVC Margate Co., L.L.C., a Michigan limited liability company, by virtue of that certain Special Warranty Deed recorded October 21, 2016 in Official Records Instrument No. 113998530, of the Public Records of Lee County, Florida.
4. The land referred to in this policy is described in Exhibit "A" attached hereto and made part hereof.

**THIS POLICY VALID ONLY IF SCHEDULE B IS ATTACHED**





*Fidelity National Title Insurance Company*

Policy No.: 2730609-210936583  
Order No.: 5190137  
Customer Reference: 59580-Margate

**EXHIBIT "A"**

Tract A, of MARGATE DISTRICT HEADQUARTERS, according to the Plat thereof, as recorded in Plat Book 88, Page 14 of the Public Records of Broward County, Florida.





**SCHEDULE B  
EXCEPTIONS FROM COVERAGE**

This policy does not insure against loss or damage, and the Company will not pay costs, attorneys' fees, or expenses that arise by reason of:

1. Mortgage, Assignment of Rents and Leases, Security Agreement and Fixture Filing, by and between TVC Margate Co., L.L.C., a Michigan limited liability company, Mortgagor, and The PrivateBank and Trust Company, an Illinois state chartered bank, Mortgagee, in the original principal amount of \$5,430,000.00, dated October 20, 2016 and recorded October 21, 2016, in Official Records Instrument No. 113998531, of the Public Records of Broward County, Florida.
2. Taxes and assessments for the year 2016 and subsequent years, which are not yet due and payable.
3. Easement in favor of Florida Power & Light Company, recorded June 22, 1971 in Official Records Book 4532, Page 26, Public Records of Broward County, Florida.
4. Easements and matters as set forth, shown or reflected on the Plat of MARGATE DISTRICT HEADQUARTERS, recorded in Plat Book 88, Page 14, Public Records of Broward County, Florida.
5. Rights of VICJ Corporate Plaza LLC, a Florida limited liability company, pursuant to post-closing Possession Agreement with TVC Margate Co., L.L.C., a Michigan limited liability company entered into on October 20, 2016.
6. Rights of Neptune International Consultants, a Florida corporation pursuant to Lease Agreement dated February 15, 2016.
7. UCC Financing Statement from TVC Margate Co., L.L.C., a Michigan limited liability company, as Debtor, in favor of The PrivateBank and Trust Company, as Secured Party, recorded October 20, 2016 in Official Records Instrument No. 113997448, of the Public Records of Broward County, Florida.

NOTE: All recording references in this commitment/policy shall refer to the public records of Broward County, Florida, unless otherwise noted.

NOTE: In accordance with Florida Statutes section 627.4131, please be advised that the insured hereunder may present inquiries, obtain information about coverage, or receive assistance in resolving complaints, by contacting Fidelity National Title Insurance Company, Telephone 1-800-669-7450.





**ENDORSEMENT  
SURVEY**

Attached to Policy No. 2730609-210936583

**Issued By  
Fidelity National Title Insurance Company**

The Company hereby acknowledges the lands described in Schedule A are the same lands described in the survey prepared by Bowman Consulting, dated August 26, 2015, under Job No. 8536-01-001 ; however, the Company does not insure the accuracy or completeness of said survey.

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

Dated: October 21, 2016

GrayRobinson, P.A.

A handwritten signature in blue ink, appearing to be 'M. Gray', written over a horizontal line.

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Authorized Signatory





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Please Note: The City of Margate levies a non-ad valorem fire assessment.  
The fire assessment, if any, is not included in the tax amounts shown above.

09-A

09-13

Date of this notice: 02-05-2018

Employer Identification Number:  
82-4285913

Form: SS-4

Number of this notice: CP 575 B

MEDALIST RESTAURANT GROUP LLC  
ERIC J PIERCE MBR  
1700 E LAS OLAS BLVD STE 206  
FT LAUDERDALE, FL 33301

For assistance you may call us at:  
1-800-829-4933

IF YOU WRITE, ATTACH THE  
STUB AT THE END OF THIS NOTICE.

WE ASSIGNED YOU AN EMPLOYER IDENTIFICATION NUMBER

Thank you for applying for an Employer Identification Number (EIN). We assigned you EIN 82-4285913. This EIN will identify you, your business accounts, tax returns, and documents, even if you have no employees. Please keep this notice in your permanent records.

When filing tax documents, payments, and related correspondence, it is very important that you use your EIN and complete name and address exactly as shown above. Any variation may cause a delay in processing, result in incorrect information in your account, or even cause you to be assigned more than one EIN. If the information is not correct as shown above, please make the correction using the attached tear off stub and return it to us.

Based on the information received from you or your representative, you must file the following form(s) by the date(s) shown.

Form 1065

03/15/2019

If you have questions about the form(s) or the due date(s) shown, you can call us at the phone number or write to us at the address shown at the top of this notice. If you need help in determining your annual accounting period (tax year), see Publication 538, *Accounting Periods and Methods*.

We assigned you a tax classification based on information obtained from you or your representative. It is not a legal determination of your tax classification, and is not binding on the IRS. If you want a legal determination of your tax classification, you may request a private letter ruling from the IRS under the guidelines in Revenue Procedure 2004-1, 2004-1 I.R.B. 1 (or superseding Revenue Procedure for the year at issue). Note: Certain tax classification elections can be requested by filing Form 8832, *Entity Classification Election*. See Form 8832 and its instructions for additional information.

A limited liability company (LLC) may file Form 8832, *Entity Classification Election*, and elect to be classified as an association taxable as a corporation. If the LLC is eligible to be treated as a corporation that meets certain tests and it will be electing S corporation status, it must timely file Form 2553, *Election by a Small Business Corporation*. The LLC will be treated as a corporation as of the effective date of the S corporation election and does not need to file Form 8832.

To obtain tax forms and publications, including those referenced in this notice, visit our Web site at [www.irs.gov](http://www.irs.gov). If you do not have access to the Internet, call 1-800-829-3676 (TTY/TDD 1-800-829-4059) or visit your local IRS office.



**Electronic Articles of Organization  
For  
Florida Limited Liability Company**

L18000023269  
FILED 8:00 AM  
January 25, 2018  
Sec. Of State  
cmwood

**Article I**

The name of the Limited Liability Company is:  
MEDALIST RESTAURANT GROUP, LLC

**Article II**

The street address of the principal office of the Limited Liability Company is:  
1700 E LAS OLAS BLVD  
206  
FORT LAUDERDALE, FL. 33301

The mailing address of the Limited Liability Company is:  
1700 E LAS OLAS BLVD  
206  
FORT LAUDERDALE, FL. 33301

**Article III**

Other provisions, if any:  
THIS IS A MANAGER-MANAGED LIMITED LIABILITY COMPANY.

**Article IV**

The name and Florida street address of the registered agent is:  
JAMES J HURCHALLA  
1700 E LAS OLAS BLVD  
206  
FORT LAUDERDALE, FL. 33301

Having been named as registered agent and to accept service of process for the above stated limited liability company at the place designated in this certificate, I hereby accept the appointment as registered agent and agree to act in this capacity. I further agree to comply with the provisions of all statutes relating to the proper and complete performance of my duties, and I am familiar with and accept the obligations of my position as registered agent.

Registered Agent Signature: JAMES J HURCHALLA

### **Article V**

The name and address of person(s) authorized to manage LLC:

Title: MGR  
ERIC J PIERCE  
1700 E LAS OLAS BLVD 206  
FORT LAUDERDALE, FL. 33301

Title: MGR  
MARK DAHMS  
1700 E LAS OLAS BLVD 206  
FORT LAUDERDALE, FL. 33301

Title: MGR  
AL LAMPE  
1700 E LAS OLAS BLVD 206  
FORT LAUDERDALE, FL. 33301

**L18000023269**  
**FILED 8:00 AM**  
**January 25, 2018**  
**Sec. Of State**  
cmwood

### **Article VI**

The effective date for this Limited Liability Company shall be:

01/25/2018

Signature of member or an authorized representative

Electronic Signature: JAMES J HURCHALLA

I am the member or authorized representative submitting these Articles of Organization and affirm that the facts stated herein are true. I am aware that false information submitted in a document to the Department of State constitutes a third degree felony as provided for in s.817.155, F.S. I understand the requirement to file an annual report between January 1st and May 1st in the calendar year following formation of the LLC and every year thereafter to maintain "active" status.



[Department of State](#) / [Division of Corporations](#) / [Search Records](#) / [Detail By Document Number](#) /

## Detail by Entity Name

Florida Limited Liability Company  
MEDALIST RESTAURANT GROUP, LLC

### Filing Information

**Document Number** L18000023269  
**FEI/EIN Number** NONE  
**Date Filed** 01/25/2018  
**Effective Date** 01/25/2018  
**State** FL  
**Status** ACTIVE

### Principal Address

1700 E LAS OLAS BLVD  
206  
FORT LAUDERDALE, FL 33301

### Mailing Address

1700 E LAS OLAS BLVD  
206  
FORT LAUDERDALE, FL 33301

### Registered Agent Name & Address

HURCHALLA, JAMES J  
1700 E LAS OLAS BLVD  
206  
FORT LAUDERDALE, FL 33301

### Authorized Person(s) Detail

#### **Name & Address**

Title MGR

PIERCE, ERIC J  
1700 E LAS OLAS BLVD 206  
FORT LAUDERDALE, FL 33301

Title MGR

DAHMS, MARK  
1700 E LAS OLAS BLVD 206  
FORT LAUDERDALE, FL 33301

Title MGR

LAMPE, AL  
1700 E LAS OLAS BLVD 206  
FORT LAUDERDALE, FL 33301

**Annual Reports**

**No Annual Reports Filed**

**Document Images**

01/25/2018 -- Florida Limited Liability

Florida Department of State, Division of Corporations

**COMPANY AGREEMENT  
OF  
MEDALIST RESTAURANT GROUP, LLC,  
a Florida Limited Liability Company**

This Company Agreement of MEDALIST RESTAURANT GROUP, LLC is executed as of February 20, 2018 (the "Effective Date") by the persons who sign and are identified as "Members" in this Agreement.

**ARTICLE I  
DEFINITIONS**

1.01 **Definitions.** As used in this Agreement, the following terms have the following meanings:

"Affiliate" means, with reference to any person, any other person controlling, controlled by or under direct or indirect common control with such person.

"Agreement" means this Company Agreement, as amended from time to time.

"Appraisal Rights procedures" means those provisions contained in Sections 605.1006 and 605.1061 to 605.1072 of the Florida Statutes, as may be amended from time to time.

"Articles of Organization" means the initial, amended, and restated articles of organization of the Company.

"Debtor in Bankruptcy" means a person who is the subject of a) an order for relief under Title 11 of the United States Code or a successor statute of general application; or b) a comparable order under federal, state, or foreign law governing insolvency.

"Business Day" means Monday through Friday, excluding any day that a national banking association is not open for normal business transactions.

"Capital Account" means a capital account maintained for a Member as provided by Treasury Regulation 1.704-1(b)(2)(iv) of the Regulations of the Internal Revenue Service.

"Capital Contribution" means the amount of money and the Net Value of property other than money contributed to the Company by a Member.

"Capital Commitment" of a Member represents the aggregate amount of capital that such Member has agreed to contribute to the Company.

"Company" means MEDALIST RESTAURANT GROUP, LLC, a Florida limited liability company.

"Default Interest Rate" means a rate per annum equal to the lesser of (a) five percent (5%) plus the prime rate published in The Wall Street Journal on the day the rate is determined (or the most recent day on which The Wall Street Journal was published if the paper is not published on the day the rate is determined), or, (b) the maximum rate permitted by applicable law.

"FRLCA" means the Florida Revised Limited Liability Company Act, including any successor statute, as may be amended from time to time.

"Former Member" means any person who had executed this Agreement, as of the date of this Agreement as a Member, or hereafter admitted to the Company as a Member, as provided in this Agreement, but who is no longer a Member of the Company; however, this term does not include a person who ceases to be a Member as a result of bankruptcy, default or expulsion.

"Fundamental Business Transaction" means (a) a merger, (b) a conversion, or (c) a sale, lease, exchange or other disposition (other than by way of a pledge, mortgage, deed of trust or trust indenture) of all or substantially all the Company's property and assets (with or without good will), other than in the usual and regular course of the Company's business.

"General Interest Rate" means a rate per annum equal to the lesser of (a) the prime rate published in The Wall Street Journal on the day the rate is determined (or the most recent day on which The Wall Street Journal was published if the paper is not published on the day the rate is determined), or, (b) the maximum rate permitted by applicable law.

"Internal Revenue Code" means the Internal Revenue Code of 1986 and any successor statute, as amended from time to time.

"Member" means any person executing this Agreement as of the date of this Agreement as a Member or hereafter admitted to the Company as a Member as provided in this Agreement, but does not include any person who has ceased to be a Member of the Company.

"Membership Interest" means the interest of a Member in the Company, including, without limitation, rights to distributions (liquidating or otherwise), allocations, information, and to consent or approve.

"Net Value" means, in connection with a Capital Contribution of property, the value of the asset less any indebtedness to which the asset is subject when contributed.

"Percentage Interest" means the ratio in which the Members shall share profits and losses, as provided in this Agreement. The sum of the Members' Percentage Interests shall be one hundred percent (100%).

"Person" means any business entity, trust, estate, executor, administrator, or individual.

"Proceeding" means any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative, arbitrate or investigative.

"Simple Majority" means one or more Members having among them more than fifty percent (50%) of the Percentage Interests of all Members.

"Super Majority" means one or more Members having among them more than sixty-six and sixty-seven hundredths percent (66.67%) of the Percentage Interests of all Members.

"Transfer" means any sale, transfer, encumbrance, gift, donation, assignment, pledge, hypothecation, or other form of transfer of a Membership Interest or any portion of a Membership Interest, whether voluntary or involuntary, whether attempted or completed, and whether during the transferor's lifetime or upon or after the transferor's death, including by operation of law, court order, judicial process, foreclosure, levy or attachment.

"Transferable Interest" means the right, as initially owned by a person in the person's capacity as a Member, to receive distributions from a limited liability company in accordance with this Agreement, whether the person remains a Member or continues to own a part of the right. The term applies to any fraction of the interest, by whomever owned.

"Transferee" means a person to which all or part of a Transferable Interest is transferred, but who has not been admitted to the Company as a Member.

Other terms defined herein have the meaning so given them.

## **ARTICLE II ORGANIZATION**

**2.01 Formation.** The Company has been organized as a Florida limited liability company by filing Articles of Organization with the Secretary of State of Florida, which may be amended or restated from time to time.

**2.02 Name.** The name of the Company is "MEDALIST RESTAURANT GROUP, LLC" and all Company business must be conducted in that name or such other names that comply with applicable law as the Members may select from time to time.

**2.03 Registered Office and Registered Agent.** The registered office of the Company required by the FRLCA to be maintained in the State of Florida shall be the office of the initial registered agent named in the Articles of Organization or such other office (which need not be a place of business of the Company) as the Members may designate from time to time in the

manner provided by law. The registered agent of the Company in the State of Florida shall be the initial registered agent named in the Articles of Organization or such other person or persons as the Members may designate from time to time in the manner provided by law.

**2.04 Principal Office and Other Offices.** The principal office of the Company in the United States shall be at such place as the Members may designate from time to time, which need not be in the State of Florida. The Company may have such other offices as the Members may designate from time to time.

**2.05 Purposes.** The primary purposes of the Company shall be to manage and operate Culver's Franchise Restaurants.

**2.06 Powers.** The Company shall have all powers necessary, suitable or convenient for the accomplishment of the purposes of the Company, including without limitation (a) to make and perform all contracts; (b) to borrow or lend money and secure payment thereof; (c) to engage in all activities and transactions; and (d) to have all powers available to a limited liability company under (i) the FRLCA, (ii) any other laws in the State of Florida, and (iii) the laws of any other jurisdiction where the Company conducts business.

**2.07 Foreign Qualification.** Prior to the Company's conducting business in any jurisdiction other than Florida, the Members shall cause the Company to comply, to the extent procedures are available and those matters are reasonably within the control of the Members, with all requirements necessary to qualify the Company as a foreign limited liability company in that jurisdiction. Each Member shall immediately execute, acknowledge, swear to, and deliver all certificates and other instruments conforming with this Agreement that are necessary or appropriate to qualify, continue, and terminate the Company as a foreign limited liability company in all such jurisdictions in which the Company may conduct business.

**2.08 Term.** The Company will commence on first proper filing of Articles of Organization for the Company with the Secretary of the State of Florida, and will continue until the Company terminates under the terms of this Agreement.

**2.09 Mergers and Exchanges.** The Company may be a party to a merger, an exchange, or other acquisition under the FRLCA, subject to the requirements of this Agreement.

**2.10 No State-Law Partnership.** The Members intend that the Company not be a partnership, a limited partnership, or a joint venture, and that no Member be a partner or joint venturer of any other Member, for any purposes other than federal and state tax purposes, and this Agreement may not be construed to suggest otherwise.

### **ARTICLE III MEMBERSHIP**

**3.01 Initial Members, Capital Commitments, and Percentage Interests.** The persons listed on Exhibit A are hereby admitted to the Company as a Member, effective contemporaneously with the Effective Date of formation of the Company. Set forth opposite the

name of each Member listed on Exhibit A is such Member's Capital Commitment and its Percentage Interest. Exhibit A may be amended from time to time to reflect changes in or additions to the membership of the Company. Any such amended Exhibit A shall (a) supersede all prior Exhibit A's, (b) become part of this Agreement, and (c) be kept on file at the principal office of the Company. Each Member represents that the Member is acquiring an interest in the Company for the account of such Member and not with a view to distribution thereof within the meaning of the Securities Act of 1933, as amended, or any state securities laws. The Member will not transfer such interest in contravention of that act or any applicable state or federal securities laws.

**3.02 Additional Members.** Additional persons may be admitted to the Company as Additional Members on such terms and conditions as shall be determined by the consent of a Super Majority of the Members. The terms of admission or issuance must specify the Percentage Interests and the Capital Commitments applicable thereto. The terms of admission or issuance may also provide for the creation of different classes or groups of Members and having different rights, powers, and duties. The Members shall reflect the creation of any new class or group in an amendment to this Agreement indicating the different rights, powers, and duties, and such an amendment need be executed only by the Members.

**3.03 Member Rights Specified in Agreement.** Except as otherwise specifically provided in this Agreement, no Member shall have the right (a) to sell, transfer or assign its interest in the Company; (b) to require partition of the property of the Company; or (c) to compel the sale of Company assets.

**3.04 No Authority.** Except as otherwise specifically provided in this Agreement, no Member (other than an officer) has the authority or power to (a) transact business in the name of or on behalf of the Company, (b) bind or obligate the Company, or (c) incur any expenditures on behalf of the Company.

**3.05 Liability to Third Parties.** No Member shall be liable for the debts, obligations or liabilities of the Company, including under a judgment decree or order of a court.

**3.06 Withdrawal.** A Member may dissociate as a Member of the Company at any time by withdrawing as a Member by express will. The Member shall be dissociated upon the Company receiving notice of the person's express will to withdraw as a Member, or a date later than that of the notice, if specified by the Member. Any dissociation shall be deemed "wrongful" under the FRLCA, and the Member shall be liable to the limited liability company and to the other Members for damages caused by the dissociation.

## **ARTICLE IV CAPITAL CONTRIBUTIONS**

**4.01 Initial Contributions.** Contemporaneously with the execution of this Agreement, each Member shall make the initial Capital Contribution described for that Member in Exhibit A.

**4.02 No Further Contributions.** No Member shall be required to make any Capital

Contributions other than those specifically described by this Agreement, unless agreed to in writing by the contributing Member or required by the FRLCA.

**4.03 Return of Contributions.** No Member is entitled to the return of any part of its Capital Contributions or to be paid interest in respect of either its Capital Account or its Capital Contributions. An unrepaid Capital Contribution is not a liability of the Company or of any Member.

**4.04 Loans by Members.** If the Company does not have sufficient cash to pay its obligations, any Member that may agree to do so with the Members' consent may advance all or part of the needed funds to or on behalf of the Company. An advance described in this paragraph constitutes a loan from the Member to the Company, bears interest at the General Interest Rate from the date of the advance until the date of payment, and is not a Capital Contribution.

**4.05 Capital Accounts.** A Capital Account shall be established and maintained for each Member. The Capital Account of each Member:

(a) shall consist of (i) the amount of money contributed by that Member to the Company, and (ii) the fair market value of property contributed by that Member to the Company (net of liabilities secured by the contributed property that the Company is considered to assume or take subject to under Section 752 of the Internal Revenue Code);

(b) shall be increased by allocations to that Member of Company income and gain (or items thereof), including income and gain exempt from tax and income and gain described in Treasury Regulation § 1.704-1(b)(2)(iv)(g), but excluding income and gain described in Treasury Regulation § 1.704-1(b)(4)(i); and

(c) shall be decreased by (i) the amount of money distributed to that Member by the Company, (ii) the fair market value of property distributed to that Member by the Company (net of liabilities secured by the distributed property that the Member is considered to assume or take subject to under section 752 of the Internal Revenue Code), (iii) allocations to that Member of expenditures of the Company described in Section 705(a)(2)(B) of the Internal Revenue Code, and (iv) allocations of Company loss and deduction (or items thereof), including loss and deduction described in Treasury Regulation § 1.704-1(b)(2)(iv)(g), but excluding items described in clause (c)(iii) above and loss or deduction described in Treasury Regulation § 1.704-1(b)(4)(i) or § 1.704-1(b)(4)(iii).

The Capital Account of each Member also shall be maintained and adjusted as permitted by the provisions of Treasury Regulation § 1.704-1(b)(2)(iv)(f) and as required by the other provisions of Treasury Regulation § 1.704-1(b)(2)(iv) and 1.704-1(b)(4), including adjustments to reflect the allocations to the Members of depreciation, depletion, amortization, and gain or loss as computed for tax purposes, as required by Treasury Regulation § 1.704-1(b)(2)(iv)(g). A Member that has more than one Membership Interest shall have a single Capital Account that reflects all its Membership Interests, regardless of the class of Membership Interests owned by that Member and regardless of the time or manner in which those Membership Interests were

acquired. On the transfer of all or part of a Membership Interest, the Capital Account of the transferor that is attributable to the transferred Membership Interest or part thereof shall carry over to the transferee Member in accordance with the provisions of Treasury Regulation § 1.704-1(b)(2)(iv)(l).

## **ARTICLE V ALLOCATIONS AND DISTRIBUTIONS**

### **5.01 Allocations.**

(a) Except as may be required by Section 704(c) of the Internal Revenue Code and Treasury Regulation § 1.704-1(b)(2)(iv)(f)(4), all items of income, gain, loss, deduction and credit of the Company shall be allocated among the Members in accordance with their Percentage Interests.

(b) All items of income, gain, loss, deduction, and credit allocable to any Membership Interest that may have been transferred shall be allocated between the transferor and the transferee based on the portion of the calendar year during which each was recognized as owning that Membership Interest, without regard to the results of Company operations during any particular portion of that calendar year and without regard to whether cash distributions were made to the transferor or the transferee during that calendar year; provided, however, that this allocation must be made in accordance with a method permissible under Section 706 of the Internal Revenue Code and the regulations thereunder.

(c) In the event any Member unexpectedly receives any adjustments, allocations or distributions described in § 1.704-1(b)(2)(ii)(d)(4), (5) or (6) of the Treasury Regulations, items of the Company's income and gain shall be specially allocated as a qualified income offset to each such Member in an amount and manner sufficient to eliminate, to the extent required by the Treasury Regulations, the Adjusted Capital Account Deficit of such Member as quickly as possible, provided that an allocation pursuant to this paragraph 5.01(c) shall be made only if and to the extent that such Member has an Adjusted Capital Account Deficit after all other allocations provided for in this Article have been tentatively made as if this paragraph 5.01(c) were not in this Agreement.

### **5.02 Distributions.**

(a) From time to time (but at least once each calendar quarter) the Members shall determine in their reasonable judgment to what extent (if any) the Company's cash on hand exceeds its current and anticipated needs, including, without limitation, for operating expenses, debt service, acquisitions, and a reasonable contingency reserve. If such an excess exists, the Members shall cause the Company to distribute to the Members and any Transferees, in accordance with their Percentage Interests, an amount in cash equal to that excess.

(b) From time to time the Members also may cause property of the Company other than cash to be distributed to the Members and any Transferees, which distribution must be made in accordance with their Percentage Interests and may be made subject to existing

liabilities and obligations. Immediately prior to such a distribution, the Capital Accounts of the Members shall be adjusted as provided in Treasury Regulation § 1.704-1(b)(2)(iv)(f).

## **ARTICLE VI MANAGEMENT**

**6.01 Management by Members.** The management of the Company is fully reserved to its Members in proportion to the Members' respective Percentage Interests; the Members shall have the sole and exclusive control of the management, business and affairs of the Company, and the Members shall make all decisions and take all actions for the Company not otherwise provided for in this Agreement, including, without limitation, the following:

(a) entering into, making, and performing contracts, agreements, and other undertakings binding the Company that may be necessary, appropriate, or advisable in furtherance of the purposes of the Company and making all decisions and waivers thereunder;

(b) opening and maintaining bank and investment accounts and arrangements, drawing checks and other orders for the payment of money, and designating individuals with authority to sign or give instructions with respect to those accounts and arrangements;

(c) maintaining the assets of the Company in good order;

(d) collecting sums due the Company;

(e) to the extent that funds of the Company are available therefor, paying debts and obligations of the Company;

(f) acquiring, utilizing for Company purposes, and disposing of any asset of the Company;

(g) borrowing money or otherwise committing the credit of the Company for Company activities and voluntary prepayments or extensions of debt;

(h) selecting, removing, and changing the authority and responsibility of lawyers, accountants, and other advisers and consultants;

(i) obtaining insurance for the Company;

(j) determining distributions of Company cash and other property as provided in paragraph 5.02 of this Agreement;

(k) establishing a seal for the Company; and

(l) designating one or more committees, each of which shall be comprised of one

or more Members, to exercise any authority of the Members in the management, business and affairs of the Company.

**6.02 Restrictions.** Notwithstanding the provisions of paragraph 6.01 of this Agreement, the Members may not cause the Company to do any of the following without complying with the applicable requirements set forth below:

(a) enter into a Fundamental Business Transaction, without complying with the Appraisal Rights procedures set forth in the FRLICA (a sale, lease, exchange or other disposal of all or substantially all the Company's property and assets, other than in the usual and regular course of the Company's business, shall be considered an "appraisal event" for the purposes of the Appraisal Rights procedures set forth in the FRLICA);

(b) do any act in violation of this Agreement;

(c) admit a Member, except as expressly permitted by this Agreement;

(d) possess Company property or assign rights in Company property, other than for a Company purpose; or

(e) amend this Agreement, except as expressly permitted by this Agreement.

**6.03 Conflicts of Interest.** Subject to the other express provisions of this Agreement, each Member and officer of the Company at any time and from time to time may engage in and possess interests in other business ventures of any and every type and description, independently or with others, including ones in competition with the Company, with no obligation to offer to the Company or any other Member or officer the right to participate therein. The Company may transact business with any Member, officer or Affiliate thereof, provided the contract or transaction is fair to the Company as of the time it is authorized or ratified by Members.

**6.04 Liability for Inaccurate Information in Filed Record.** The following Members are responsible for maintaining the accuracy of information contained in records delivered on behalf of the Company to the Department of State of Florida for filing: ERIC J. PIERCE. All other members of the Company are relieved of this responsibility and are not liable for any inaccuracies.

## **ARTICLE VII CONFIDENTIAL INFORMATION**

**7.01 Confidential Information.** The Members acknowledge that, from time to time, they may receive information from or regarding the Company in the nature of trade secrets or that otherwise is confidential, the release of which may be damaging to the Company or persons with which it does business. Each Member shall hold in strict confidence any information it receives regarding the Company that is identified as being confidential (and if that information is provided in writing, that is so marked) and may not disclose it to any person other than another Member, except for disclosures (i) compelled by law (but the Member must notify the Members

promptly of any request for that information, before disclosing it if practicable), (ii) to advisers or representatives of the Member or persons to which that Member's Membership Interest may be transferred as permitted by this Agreement, but only if the recipients have agreed to be bound by the provisions of this paragraph, or (iii) of information that Member also has received from a source independent of the Company that the Member reasonably believes obtained that information without breach of any obligation of confidentiality.

7.02. **Specific Performance.** The Members acknowledge that breach of the provisions of paragraph 7.01 of this Agreement may cause irreparable injury to the Company for which monetary damages are inadequate, difficult to compute, or both. Accordingly, the Members agree that the provisions of paragraph 7.01 of this Agreement may be enforced by specific performance.

## **ARTICLE VIII MEETING OF MEMBERS**

### **8.01 Meetings.**

(a) A quorum shall be present at a meeting of Members if the holders of a Simple Majority are represented at the meeting in person or by proxy. With respect to any matter, other than a matter for which the affirmative vote of the holders of a specified portion of the Percentage Interests of all Members entitled to vote is required by the FRLCA or this Agreement, the affirmative vote of a Simple Majority at a meeting of Members at which a quorum is present shall be the act of the Members, except as provided by paragraph 8.01(b) or by another specific provision in this Agreement.

(b) The vote of a Super Majority of the Members shall be required for the Company to enter into a Fundamental Business Transaction.

(c) All meetings of the Members shall be held at the principal place of business of the Company or at such other place within or outside the State of Florida as shall be specified or fixed in the notices or waivers of notice thereof; provided that any or all Members may participate in any such meetings by means of conference telephone or similar communications equipment pursuant to paragraph 8.06 of this Agreement.

(d) Notwithstanding the other provisions of the Articles of Organization or this Agreement, the chairman of the meeting or the holders of a Super Majority shall have the power to adjourn such meeting from time to time, without any notice other than announcement at the meeting of the time and place of the holding of the adjourned meeting. If such meeting is adjourned by the Members, such time and place shall be determined by a vote of the holders of a Super Majority. Upon the resumption of such adjourned meeting, any business may be transacted that might have been transacted at the meeting as originally called.

(e) An annual meeting of the Members for the transaction of other business as may properly come before the meeting, shall be held at such place, within or outside the State of Florida, on such date and at such time as the Members shall fix and set forth in the notice of the

meeting, which date shall be within thirteen months subsequent to the date of organization of the Company or the last annual meeting of Members, whichever most recently occurred.

(f) Special meetings of the Members for any proper purpose or purposes may be called at any time by the holders of at least ten percent of the Percentage Interests of all Members. If not otherwise stated in or fixed in accordance with the remaining provisions hereof, the record date for determining Members entitled to call a special meeting is the date any Member first signs the notice of that meeting. Only business within the purpose or purposes described in the notice (or waiver thereof) required by this Agreement may be conducted at a special meeting of the Members.

(g) Written or printed notice stating the place, day and hour of the meeting and, in the case of a special meeting, the purpose or purposes for which the meeting is called, shall be delivered not less than ten nor more than sixty days before the date of the meeting, either personally or by mail, by or at the direction of the person calling the meeting, to each Member entitled to vote at such meeting. If mailed, any such notice shall be deemed to be delivered when deposited in the United States mail, addressed to the Member at his address on the voting list provided for in paragraph 8.02 of this Agreement, with postage thereon prepaid.

(h) The date on which notice of a meeting of Members is mailed or the date on which the resolution of the Members declaring a distribution is adopted, as the case may be, shall be the record date for the determination of the Members entitled to notice of or to vote at such meeting, including any adjournment thereof, or the Members entitled to receive such distribution.

**8.02 Voting List.** The Members shall make, at least ten (10) days before each meeting of Members, a complete list of the Members entitled to vote at such meeting or any adjournment thereof, arranged in alphabetical order, with the address of and the Percentage Interests held by each. For a period of ten (10) days prior to such meeting, such list shall be kept on file at the registered office or principal place of business of the Company and shall be subject to inspection by any Member at any time during usual business hours. Such list shall also be produced and kept open at the time and place of the meeting and shall be subject to the inspection of any Member during the whole time of the meeting. The original membership records shall be prima-facie evidence as to who are the Members entitled to examine such list or transfer records or to vote at any meeting of Members. Failure to comply with the requirements of this paragraph shall not affect the validity of any action taken at the meeting.

**8.03 Proxies.** A Member may vote either in person or by proxy executed in writing by the Member. A telegram, telex, cablegram or similar transmission by the Member, or a photographic, photostatic, facsimile or similar reproduction of a writing executed by the Member shall be treated as an execution in writing for purposes of this paragraph. Proxies for use at any meeting of Members or in connection with the taking of any action by written consent shall be filed with the Members, before or at the time of the meeting or execution of the written consent, as the case may be. All proxies shall be received and taken charge of and all ballots shall be received and canvassed by the Members, who shall decide all questions touching upon the qualification of voters, the validity of the proxies, and the acceptance or rejection of votes, unless

an inspector or inspectors shall have been appointed by the chairman of the meeting, in which event such inspector or inspectors shall decide all such questions. No proxy shall be valid after eleven (11) months from the date of its execution unless otherwise provided in the proxy. A proxy shall be revocable unless the proxy form conspicuously states that the proxy is irrevocable and the proxy is coupled with an interest. Should a proxy designate two or more persons to act as proxies, unless that instrument shall provide to the contrary, a majority of such persons present at any meeting at which their powers thereunder are to be exercised shall have and may exercise all the powers of voting or giving consents thereby conferred, or if only one be present, then such powers may be exercised by that one; or, if an even number attend and a majority do not agree on any particular issue, the Company shall not be required to recognize such proxy with respect to such issue if such proxy does not specify how the Percentage Interests that are the subject of such proxy are to be voted with respect to such issue.

**8.04 Conduct of Meetings.** All meetings of the Members shall be presided over by the chairman of the meeting, who shall be designated by a Simple Majority of the Members. The chairman of any meeting of Members shall determine the order of business and the procedure at the meeting, including the regulation of the manner of voting and the conduct of discussion.

**8.05 Action by Unanimous Written Consent Without Meeting.**

(a) Any action required or permitted to be taken at any annual or special meeting of Members may be taken without a meeting, without prior notice, and without a vote, by unanimous written consent of the Members or committee members, as the case may be, setting forth the action so taken. Every written consent shall bear the date of signature of each Member who signs the consent. No written consent shall be effective to take the action that is the subject to the consent unless, within sixty (60) days after the date of the earliest dated consent delivered to the Company in the manner required by this paragraph, the signed consent or consents are delivered to the Company by delivery to its registered office, its principal place of business, or the Members. Delivery shall be by hand or certified or registered mail, return receipt requested. Delivery to the Company's principal place of business shall be addressed to the Members. A telegram, telex, cablegram or similar transmission by a Member, or a photographic, photostatic, facsimile or similar reproduction of a writing signed by a Member, shall be regarded as signed by the Member for purposes of this paragraph. The signed consent or a signed copy of the consent shall be kept on file at the principal office of the Company.

(b) The record date for determining Members entitled to consent to action in writing without a meeting shall be the first date on which a signed written consent setting forth the action taken or proposed to be taken is delivered to the Company by delivery to its registered office, its principal place of business, or the Members. Delivery shall be by hand or by certified or registered mail, return receipt requested. Delivery to the Company's principal place of business shall be addressed to the Members.

(c) If any action by Members is taken by written consent, any articles or documents filed with the Secretary of State of Florida as a result of the taking of the action shall state, in lieu of any statement required by the FRLCA concerning any vote of Members, that written consent has been given in accordance with the provisions of the FRLCA and that any

written notice required by the FRLCA has been given.

**8.06 Action by Telephone Conference or Other Remote Communications Technology.** Members may participate in and hold a meeting by means of conference telephone or similar communications equipment by which all persons participating in the meeting can hear each other. Or, another suitable electronic communications system may be used including video-conferencing technology or the Internet, but only if each member entitled to participate in the meeting consents to the meeting being held by means of that system and the system provides access to the meeting in a manner or using a method by which each member participating in the meeting can communicate concurrently with each other participant. Participation in such meeting shall constitute attendance and presence in person at such meeting, except where a person participates in the meeting for the express purpose of objecting to the transaction of any business on the ground that the meeting is not lawfully called or convened.

**8.07 Classes of Members; Voting.** At an annual or special meeting called for that purpose, the Members may from time to time establish classes or groups of Members. One or more of the Members' groups or classes may have certain expressed relative rights, powers, and duties, including voting rights, to be established at the time when the classes or groups are created, with seniority granted to one or more class or group as designated by the Members.

## **ARTICLE IX OFFICERS**

**9.01 Qualification.** The Members may, from time to time, designate one or more persons to be officers of the Company. No officer need be a resident of the State of Florida or a Member. Any officers so designated shall have such authority and perform such duties as the Members may, from time to time, delegate to them. The Members may assign titles to particular officers. Unless the Members decide otherwise, if the title is one commonly used for officers of a business corporation, the assignment of such title shall constitute the delegation to such officer of the authority and duties that are normally associated with that office, subject to any specific delegation of authority and duties made to such officer by the Members pursuant to this paragraph. Each officer shall hold office until his successor shall be duly designated and qualify for such office, until his death, or until he shall resign or shall have been removed in the manner hereinafter provided. Any vacancy occurring in any office of the Company may be filled by the Members. Any number of offices may be held by one person.

**9.02. Compensation.** The salaries or other compensation, if any, of the officers and agents of the Company shall be fixed from time to time by the Members. However, election or appointment of an officer or agent shall not of itself, nor shall anything in this Agreement, create contract rights. The majority of the Managers have agreed that Eric J. Pierce shall receive \$1,000.00 per month compensation for pre-opening work for the first franchise.

**9.03. Resignation.** Any officer may resign as such at any time. Such resignation shall be made in writing and shall take effect at the time specified therein, or if no time be specified, at the time of its receipt by the Members. The acceptance of a resignation shall not be necessary to make it effective, unless expressly so provided in the resignation.

9.04. **Removal.** Any officer may be removed as such, either with or without cause, by the Members whenever in their judgment the best interests of the Company will be served thereby; provided, however, that such removal shall be without prejudice to the contract rights, if any, of the person so removed.

## **ARTICLE X INDEMNIFICATION**

10.01 **Right to Indemnification.** Subject to the limitations and conditions as provided in this Article, each person who was or is made a party or is threatened to be made a party to or is involved in any Proceeding, or any appeal in such a Proceeding, or any inquiry or investigation that could lead to such a Proceeding, by reason of the fact that he or she, or a person of whom he or she is the legal representative, is or was a Member of the Company or while a Member of the Company is or was serving at the request of the Company as a director, officer, partner, venturer, proprietor, trustee, employee, agent, or similar functionary of another foreign or domestic limited liability company, corporation, partnership, joint venture, sole proprietorship, trust, employee benefit plan or other enterprise shall be indemnified by the Company to the fullest extent permitted by the FRLCA, as the same exist or may hereafter be amended (but, in the case of any such amendment, only to the extent that such amendment permits the Company to provide broader indemnification rights than said law permitted the Company to provide prior to such amendment) against judgments, penalties (including excise and similar taxes and punitive damages), fines, settlements and reasonable expenses (including, without limitation, attorney's fees) actually incurred by such person in connection with such Proceeding, and indemnification under this Article shall continue as to a person who has ceased to serve in the capacity which initially entitled such person to indemnity hereunder. The rights granted pursuant to this Article shall be deemed contract rights, and no amendments, modification or repeal of this Article shall have the effect of limiting or denying any such rights with respect to actions taken or Proceeding arising prior to any such amendment, modification or repeal. It is expressly acknowledged that the indemnification provided in this Article could involve indemnification for negligence or under theories of strict liability.

10.02 **Advance Payment.** The right to indemnification conferred in this Article shall include the right to be paid or reimbursed by the Company the reasonable expenses incurred by a person of the type entitled to be indemnified under paragraph 10.01 of this Agreement who was, is or is threatened to be made a named defendant or respondent in a Proceeding in advance of the final disposition of the Proceeding and without any determination as to the person's ultimate entitlement to indemnification; provided, however, that the payment of such expenses incurred by any such person in advance of the final disposition of a Proceeding, shall be made only upon delivery to the Company of a written affirmation by such person of his or her good faith belief that he has met the standard of conduct necessary for indemnification under this Article and a written undertaking, by or on behalf of such person, to repay all amounts so advanced if it shall ultimately be determined that such indemnified person is not entitled to be indemnified under this Article or otherwise.

10.03 **Indemnification of Officers, Employees and Agents.** The Company, by

adoption of a resolution of the Members, may indemnify and advance expenses to an officer, employee or agent of the Company to the same extent and subject to the same conditions under which it may indemnify and advance expenses to Members under this Article; and, the Company may indemnify and advance expenses to persons who are not or were not officers, employees, or agents of the Company but who are or were serving at the request of the Company as a director, officer, partner, venturer, proprietor, trustee, employee, agent or similar functionary of another foreign or domestic limited liability company, corporation, partnership, joint venture, sole proprietorship, trust, employee benefit plan or other enterprise against any liability asserted against him and incurred by him in such a capacity or arising out of his status as such a person to the same extent that it may indemnify and advance expenses to Members under this Article.

**10.04 Appearance as a Witness.** Notwithstanding any other provision of this Article, the Company may pay or reimburse expenses incurred by a Member in connection with his appearance as a witness or other participation in a Proceeding at a time when he is not a named defendant or respondent in the Proceeding.

**10.05 Nonexclusivity of Rights.** The right to indemnification and the advancement and payment of expenses conferred in this Article shall not be exclusive of any other right which a Member or other person indemnified pursuant to paragraph 10.03 of this Agreement may have or hereafter acquire under any law (common or statutory), provision of the Articles of Organization or this Agreement, agreement, vote of disinterested Members or otherwise.

**10.06 Insurance.** The Company may purchase and maintain insurance, at its expense, to protect itself and any person who is a Member or was serving as a officer, employee or agent of the Company or is or was serving at the request of the Company as a director, officer, partner, venturer, proprietor, trustee, employee, agent or similar functionary of another foreign or domestic limited liability company, corporation, partnership, joint venture, sole proprietorship, trust, employee benefit plan or other enterprise against any expense, liability or loss, whether or not the Company would have the power to indemnify such person against such expense, liability or loss under this Article.

**10.07 Member Notification.** To the extent required by law, any indemnification of or advance of expenses to a Member in accordance with this Article shall be reported in writing to the Members with or before the notice or waiver of notice of the next Members' meeting or with or before the next submission to Members of a consent to action without a meeting and, in any case, within the twelve month period immediately following the date of the indemnification or advance.

**10.08 Savings Clause.** If this Article or any portion hereof shall be invalidated on any ground by any court of competent jurisdiction, then the Company shall nevertheless indemnify and hold harmless each Member or any other person indemnified pursuant to this Article as to costs, charges, and expenses (including attorney's fees), judgments, fines and amounts paid in settlement with respect to any action, suit or Proceeding, whether civil, criminal, administrative or investigative to the full extent permitted by any applicable portion of this Article that shall not have been invalidated and to the fullest extent permitted by applicable law.

## ARTICLE XI TAXES

11.01 **Tax Returns.** The Members shall cause to be prepared and filed all necessary federal and state income tax returns for the Company, including making the elections described in paragraph 11.02 of this Agreement. Each Member shall furnish to the Members all pertinent information in its possession relating to Company operations that is necessary to enable the Company's income tax returns to be prepared and filed.

11.02 **Tax Elections.** The Company shall make the following elections on the appropriate tax returns:

(a) to adopt the calendar year as the Company's fiscal year;

(b) to adopt the cash method of accounting for keeping the Company's books and records;

(c) if a distribution of Company property as described in Section 734 of the Internal Revenue Code occurs or if a transfer of a Membership Interest as described in Section 743 of the Internal Revenue Code occurs, on written request of any Member, to elect, pursuant to Section 754 of the Internal Revenue Code, to adjust the basis of Company properties;

(d) to elect to amortize the organizational expenses of the Company and the startup expenditures of the Company under Section 195 of the Internal Revenue Code ratably over a period of sixty (60) months as permitted by Section 709(b) of the Internal Revenue Code; and

(e) any other election the Members may deem appropriate and in the best interest of the Members.

Neither the Company nor any Member may make an election for the Company to be excluded from the application of the provisions of subchapter K of chapter 1 subtitle A of the Internal Revenue Code or any similar provisions of applicable state law, and no provision of this Agreement shall be construed to sanction or approve such an election.

11.03 **"Tax Matters Partner."** A Simple Majority of the Members shall designate one Member to be the "tax matters partner" of the Company pursuant to Section 6231(a)(7) of the Internal Revenue Code. Any Member who is designated "tax matters partner" shall take such action as may be necessary to cause each other Member to become a "notice partner" within the meaning of Section 6223 of the Internal Revenue Code. Any Member who is designated "tax matters partner" shall inform each other Member of all significant matters that may come to its attention in its capacity as "tax matters partner" by giving notice thereof on or before the fifth Business Day after becoming aware thereof and, within that time, shall forward to each other Member copies of all significant written communications it may receive in that capacity. Any Member who is designated "tax matters partner" may not take action contemplated by Section

6222 through 6232 of the Internal Revenue Code without the consent of a Simple Majority.

## **ARTICLE XII BOOKS, RECORDS, REPORTS, AND BANK ACCOUNTS**

12.01 **Maintenance of Books.** The Company shall keep books and records of accounts and shall keep minutes of the proceedings of its Members and each committee of the Members. The books of account for the Company shall be maintained on a cash basis in accordance with the terms of this Agreement, except that the Capital Accounts of the Members shall be maintained in accordance with Article IV of this Agreement. The calendar year shall be the accounting year of the Company.

12.02 **Accounts.** The Members shall establish and maintain one or more separate bank and investment accounts and arrangements for Company funds in the Company name with financial institutions and firms that the Members determine. The Members may not commingle the Company's funds with the funds of any Member; however, Company funds may be invested in a manner the same as or similar to the Members' investment of their own funds or investments by their Affiliates.

## **ARTICLE XIII TRANSFERS**

13.01 **Limited Right to Transfer.** No Member or Transferee shall make any Transfer of all or any part of its Membership Interest, whether now owned or hereafter acquired, except (a) with a Super Majority of the Members; (b) as provided by Article XIV of this Agreement; (c) as a Defaulting Member as provided by paragraph 15.01(f) of this Agreement; or (d) upon dissolution, as provided by paragraph 16.03 of this Agreement. Any attempted Transfer by a person of an interest or right, or any part thereof, in or in respect of the Company other than as specifically provided by this Agreement shall be, and is hereby declared, null and void *ab initio*.

13.02 **Rights of a Transferee.** Unless and until a Transferee becomes a Substituted Member of the Company as provided in this Agreement, the Transferee shall be entitled only to receive distributions to which the transferor is entitled to the extent these items were transferred. The Membership Interest of the Transferee shall not be considered in the voting requirements of the Company, and the Transferee shall have no right to participate in the operations or management of the Company. The Transferee shall not have access to records or other information concerning the company's activities and affairs, except in the case of dissolution and winding up of the Company, in which case the Transferee is entitled to an account of the Company's transactions only from the date of dissolution.

13.03 **Legal Opinion.** For the right of a Member to transfer a Membership Interest or any part thereof or of any Person to be admitted to the Company in connection therewith to exist or be exercised, the Company must receive an opinion from legal counsel acceptable to the Members that states (a) the Transfer is exempt from registration under federal and state securities laws, (b) the Transfer will not cause the Company to be in violation of federal and state securities

laws, (c) the Transfer will not adversely affect the status of the Company as a partnership under the Internal Revenue Code or Treasury Regulations, and (d) the Transfer will not result in the Company's being considered to have terminated within the meaning of the Internal Revenue Code or Treasury Regulations. The Members, however, may waive the requirements of this paragraph.

**13.04 Admission as Substituted Member.** A Transferee has the right to be admitted to the Company as a Substituted Member with the Percentage Interest and the Capital Commitment so transferred to such person, in the event that:

(a) the Member making such Transfer grants the Transferee the right to be so admitted;

(b) such Transfer is consented to in accordance with paragraph 13.01(a) of this Agreement; and

(c) a written, signed and dated instrument evidencing the Transfer has been filed with the Company in form and substance reasonably satisfactory to the Members, and said instrument contains (i) the agreement by the Transferee to be bound by all of the terms and provisions of this Agreement, (ii) any necessary or advisable representations and warranties, including that the Transfer was made in accordance with all applicable laws, regulations, and securities laws, (iii) the Percentage Interests and the Capital Commitments after the Transfer of the Member effecting the Transfer and the person to which the Membership Interest of part thereof is transferred (which together must total the Percentage Interest and the Capital Commitment of the Member effecting the Transfer before the Transfer) and (iv) the name, address and any other pertinent information necessary for amended Exhibit A and to make distributions.

**13.05 Transfer to Existing Member.** In the event of a Transfer to an existing Member, the existing Member shall be automatically deemed to be a Substituted Member.

**13.06 Third Party Offer.** In the event a Member desires to sell all or any portion of its Membership Interest to another person (other than an existing Member), the selling Member shall first offer to sell the Membership Interest to the other existing Members. Upon the receipt of an offer from a Third Party to purchase such Membership Interest, the selling Member shall promptly deliver a copy of the Third Party offer to all other Members. Each Member will have fifteen (15) days from the date of receipt of the Third Party offer to notify the selling Member in writing that the other Member intends to purchase the Membership Interest upon the terms and conditions of the Third Party offer. If more than one other Member desires to purchase the Membership Interest, each of the purchasing Members shall purchase a portion of the Membership Interest that is proportional to that Member's Percentage Interest. If none of the other Members give notification within fifteen (15) days of an intention to purchase the Membership Interest, then the selling Member shall be permitted to sell the Membership Interest to the Third Party upon the terms and conditions of the Third Party offer.

**13.07 Reasonable Expenses.** The Member effecting a Transfer and the Substituted

Member shall pay, or reimburse the Company for, all costs incurred by the Company in connection with the admission of the Substituted Member (including, without limitation, the legal fees incurred in connection with the legal opinions referred to in paragraph 13.03 of this Agreement) on or before the tenth (10th) day after the receipt by that person of the Company's invoice for the amount due. If payment is not made by the date due, the person owing the amount shall pay interest on the unpaid amount from the date due until paid at a rate per annum equal to the Default Interest Rate.

## **ARTICLE XIV BUYOUT OF MEMBERSHIP INTEREST**

### **14.01 Termination of Marital Relationship.**

(a) If the marital relationship of a Member is terminated by death or divorce and such Member does not succeed to all of such Member's spouse's marital or nonmarital interest, if any, in the Membership Interest (such spouse is referred to hereafter in this Article as the "Transferee Spouse"), either as outright owner of such Membership Interest or as a trustee of a trust holding such Membership Interest, whether or not such Member is a beneficiary of such trust, then such Member shall have the option to purchase at Fair Value (determined as of the date of the death or divorce of the Member) the Transferee Spouse's interest in the Membership Interest to which such Member does not succeed. Such option must be exercised within ninety (90) days after the death of or the Member's divorce from the Transferee Spouse. Should the Member fail to exercise such option within such 90-day period, then the Company shall have the option to purchase such Membership Interest at Fair Value for a period of ninety (90) days after the lapse of the initial 90-day period.

(b) Any Membership Interest of the Company held by a Member as a trustee of a trust as a result of the death of or the Member's divorce from the Transferee Spouse shall be treated as owned by such Member for purposes of this agreement. If such Member ceases to act as trustee of such trust for any reason, then such Member shall have the option to purchase all of the Membership Interest at Fair Value held in such trust. Such option must be exercised within ninety (90) days after such Member ceases to act as trustee of such trust. Should such Member fail to exercise such option within such 90-day period, then the Company shall have the option to purchase such Membership Interest for a period of ninety (90) days after the lapse of the initial 90-day period.

**14.02 Death of Member.** Commencing upon the death of a Member, the surviving Members shall for a period of ninety (90) days have the option to purchase all or any portion of the deceased Member's Membership Interest at Fair Value (determined as of the date of the death of the Member); provided, however, the exercise of said option shall require the approval of a Super Majority of the surviving Members. Upon the expiration of ninety (90) days after the death of a Member, the Company shall be obligated to purchase all, and not less than all, of the deceased Member's Membership Interest at Fair Value which the surviving Members do not elect to purchase pursuant to the option granted in the preceding sentence. The representative of the deceased Member (which may include spouse and executors or administrators of the deceased Member) shall sell all of the deceased Member's Membership Interest to the Company and/or the

other Members in accordance with the option or obligation established by this paragraph.

**14.03 Bankruptcy of Member.** If any Member becomes a Debtor in Bankruptcy and the Company is member-managed, the Company shall have the option, exercisable by notice from the Members to the Debtor in Bankruptcy (or its representative) at any time prior to the one hundred eightieth (180th) day after receipt of notice of the occurrence of the event causing it to become a Debtor in Bankruptcy, to purchase all or any portion of the Debtor in Bankruptcy's Membership Interest at Fair Value (determined as of the date that notice of the exercise of such option is given by the Members); provided, however, the exercise of said option shall require the approval of a Super Majority of the other Members. In the event that notice of the exercise of such option is given by the Members to the Debtor in Bankruptcy (or its representative), the Debtor in Bankruptcy shall sell its interest to the Company as provided by this Article.

**14.04 Insufficient Surplus.** If the Company shall not have sufficient surplus to permit it lawfully to purchase the Membership Interest under paragraph 14.01, 14.02 or 14.03 at the time of the closing, the other Members may take such action to vote their respective Membership Interests to reduce the capital of the Company or to take such other steps as may be appropriate or necessary in order to enable the Company lawfully to purchase such Membership Interest.

**14.05 Option by Other Members.** If the Company fails or declines to exercise an option to purchase a Membership Interest of a Member as provided by this Agreement within the period of time specified for such option, then the other Members shall have the option for a period of ninety (90) days thereafter to purchase such Membership Interest in such proportions as they mutually agree or in proportion to their respective Percentage Interests for the same price and upon the same terms available to the Company.

**14.06 Exercise of Option.** Any option to purchase a Membership Interest as provided by this Agreement shall be deemed exercised at the time the purchasing party delivers to the selling party written notice of intent to exercise such option along with an initial payment in the form of a certified or cashier's check in the amount of ten percent (10%) of the estimated purchase price anticipated by the purchaser, in person or by United States registered mail, properly stamped and addressed to the last known address of the selling party.

**14.07 Determination of Fair Value.** The "Fair Value" of a Membership Interest shall be the amount that would be distributable to the Member holding such interest in the event that the assets of the Company were sold for cash and the proceeds, net of liabilities, were distributed to the holders of all Membership Interests pursuant to this Agreement. In the event that the Fair Value of a Membership Interest is to be determined under this Agreement, the Members shall select a qualified independent appraiser to make such determination, and the Members shall make the books and records available to the appraiser for such purpose. The determination of Fair Value made by such appraiser shall be final, conclusive, and binding on the Company, all Members, and all Transferees of a Membership Interest.

**14.08 Fees and Expenses of Appraiser.** In the case of a purchase and sale of Membership Interest under paragraph 14.01 or 14.02 of this Agreement (in the event of death or divorce of a Member), the fees and expenses of such appraiser shall be paid by the Company. In

the case of a purchase and sale of Membership Interest under paragraph 14.03 or 15.01 (in the event of the bankruptcy or default of a Member), the fees and expenses of such appraiser shall be paid by the Debtor in Bankruptcy or Defaulting Member, by deducting at closing such fees and expenses from the purchase price to be paid to such Debtor in Bankruptcy or Defaulting Member, and remitting the same to the Company. Otherwise, the fees and expenses of such appraiser shall be shared equally by the purchaser and seller.

**14.09 Right to Withdraw Option.** In the event that a Member has exercised an election to purchase a Membership Interest under this Agreement and Fair Value has been determined as provided by paragraph 14.07 of this Agreement, such Member may elect to terminate its right to purchase within fifteen (15) days following its receipt of the determination of Fair Value, by delivery of written notice to the Company and to the Transferee. In such an event, the initial payment shall be returned to the Member withdrawing the option, and the other Members may elect to purchase the Membership Interest (or portion thereof) in such proportions as they mutually agree or in proportion to their respective Percentage Interests.

#### **14.10 Terms of Purchase.**

(a) The closing date for any sale and purchase made pursuant to this Article shall be the later of (i) thirty (30) days after the notice of the exercise of option has been received by the selling party, or (ii) thirty (30) days after the parties have received notice of the Fair Value of the Membership Interest.

(b) Payment of the purchase price for a Membership Interest may be made by the Company and/or the other Members as follows: (i) a down payment equal to ten percent (10%) of the Fair Value to be made at closing, and (ii) the balance of the purchase price, bearing interest at the General Interest Rate determined on the date of closing, to be paid in twenty-four (24) equal monthly installments, with the first payment due thirty (30) days after the date of closing. Any such purchaser shall have the right to pay all or any part of such obligation at any time or times in advance of maturity without penalty. In the event that the Company becomes a party to a Fundamental Business Transaction, such obligation (or remaining portion thereof) shall be paid in full within thirty (30) days of the date that the Company becomes a party to such transaction.

(c) At the closing, the person selling the Membership Interest will transfer the Membership Interest free and clear of any liens or encumbrances, other than those which may have been created to secure any indebtedness or obligations of the Company.

(d) In each event that a Membership Interest in the Company is purchased as described in this Agreement, upon the execution and delivery of the notes or payment of the cash as required herein, this Agreement shall operate as an automatic transfer to the purchaser of the Membership Interest in the Company. The payment to be made to the selling Member, Transferee, or its representative shall constitute complete release, liquidation and satisfaction of all the rights and interest of the selling Member, Transferee, or its representative (and of all persons claiming by, through, or under the selling Member, Transferee, or its representative) in and in respect of the Company, including, without limitation, any Membership Interest, any

rights in specific Company property, and any rights against the Company and (insofar as the affairs of the Company are concerned) against the Members. The parties shall perform such actions and execute such document that may be reasonably necessary to effectuate and evidence such purchase and sale, and release as provided by this paragraph.

## **ARTICLE XV DEFAULT OF A MEMBER**

**15.01 Failure to Contribute.** If a Member does not contribute by the time required all or any portion of a Capital Contribution that Member is required to make as provided in this Agreement, the Company may exercise, on notice to that Member (the "Defaulting Member"), one or more of the following remedies:

(a) taking such action (including, without limitation, court proceedings) as the Members may deem appropriate to obtain payment by the Defaulting Member of the portion of the Defaulting Member's Capital Contribution that is in default, together with interest thereon at the Default Interest Rate from the date that the Capital Contribution was due until the date that it is made, all at the cost and expense of the Defaulting Member;

(b) permitting the other Members in proportion to their Percentage Interests or in such other percentages as they may agree (the "Lending Member," whether one or more), to advance the portion of the Defaulting Member's Capital Contribution that is in default, with the following results:

(i) the sum advanced constitutes a loan from the Lending Member to the Defaulting Member and a Capital Contribution of that sum to the Company by the Defaulting Member pursuant to the applicable provisions of this Agreement,

(ii) the principal balance of the loan and all accrued unpaid interest thereon is due and payable in whole on the tenth (10th) day after written demand therefor by the Lending Member to the Defaulting Member,

(iii) the amount lent bears interest at the Default Interest Rate from the day that the advance is deemed made until the date that the loan, together with all interest accrued on it, is repaid to the Lending Member,

(iv) all distributions from the Company that otherwise would be made to the Defaulting Member (whether before or after dissolution of the Company) instead shall be paid to the Lending Member until the loan and all interest accrued on it have been paid in full to the Lending Member (with payments being applied first to accrued and unpaid interest and then to principal),

(v) the payment of the loan and interest accrued on it is secured by a security interest in the Defaulting Member's Membership Interest, as more fully set forth in paragraph 15.02 of this Agreement, and

(vi) the Lending Member has the right, in addition to the other rights and remedies granted to it pursuant to this Agreement or available to it at law or in equity, to take any action (including, without limitation, court proceedings) that the Lending Member may deem appropriate to obtain payment by the Defaulting Member of the loan and all accrued and unpaid interest on it, at the cost and expense of the Defaulting Member;

(c) exercising the rights of a secured party under the Uniform Commercial Code of the State of Florida;

(d) reducing the Defaulting Member's Membership Interest or other interest in the Company;

(e) subordination of the Defaulting Member's Membership Interest to the nondefaulting Member;

(f) a forced sale of the Defaulting Member's Membership Interest at Fair Value and upon the terms of purchase as provided in Article XIV;

(g) forfeiture of the Defaulting Member's Membership Interest; or

(h) exercising any other rights and remedies available at law or in equity.

**15.02 Security.** Each Member grants to the Company, and to each Lending Member with respect to any loans made by the Lending Member to that Member as a Defaulting Member under this Article, as security, equally and ratably, for the payment of all Capital Contributions that Member has agreed to make and the payment of all loans and interest accrued on them made by Lending Members to that Member as a Defaulting Member pursuant to paragraph 15.01(b) of this Agreement, a security interest in, and a general lien on its Membership Interest and the proceeds thereof, all under the Uniform Commercial Code of the State of Florida. It is expressly agreed that the security interest created thereby shall be governed by Chapter 679 of the Florida Statutes, the Uniform Commercial Code - Secured Transactions. On any default in the payment of a Capital Contribution or in the payment of such a loan or interest accrued on it, the Company or the Lending Member, as applicable, is entitled to all the rights and remedies of a secured party under the Uniform Commercial Code of the State of Florida with respect to the security interest granted in this Article. Each Member shall execute and deliver to the Company and the other Members all financing statements and other instruments that the Members or the Lending Member, as applicable, may request to effectuate and carry out the preceding provisions of this Article. At the option of the Members or a Lending Member, this Agreement or a carbon, photographic, or other copy hereof may serve as a financing statement.

**15.03 Compromise or Release.** The obligation of a Defaulting Member or its legal representative or successor to make a contribution or otherwise pay cash or transfer property or to return cash or property paid or distributed to the Defaulting Member in violation of the FRLCA or this Agreement may be compromised or released only with the approval of a Super

Majority of the other Members. Notwithstanding the compromise or release, a creditor of the Company who extends credit or otherwise acts in reasonable reliance on that obligation, after the Member signs a writing that reflects the obligation and before the writing is amended or canceled to reflect the compromise or release, may enforce the original obligation.

**15.04 Expulsion.** A Member may be expelled from the Company by unanimous vote of all other Members (not including the Member to be expelled) if that Member (a) has willfully violated any provision of this Agreement; (b) committed fraud, theft, or gross negligence against the Company or one or more Members of the Company, (c) engaged in wrongful conduct that adversely and materially affects the business or operation of the Company or (d) met any other condition that allows a Member to be expelled under the FRLCA. Such a Member shall be considered a Defaulting Member, and the Company or other Members may also exercise any one or more of the remedies provided for in Article 15.01. The Company may offset any damages to the Company or its Members occasioned by the misconduct of the expelled Member against any amounts distributable or otherwise payable by the Company to the expelled Member.

**15.05 Other Dissociation.** If a Member becomes dissociated from the Company by any other means not already specifically mentioned in Articles XIV and XV, the Member shall be considered a Defaulting Member and the Company or other Members may exercise any one or more of the remedies provided for in Article 15.01, subject to the approval of a Super Majority of the other Members.

## **ARTICLE XVI DISSOLUTION**

**16.01 Event Requiring Dissolution.** The Company shall begin to wind up its affairs upon the first of the following to occur:

(a) the execution of an instrument approving the dissolution of the Company by a Super Majority of the Members;

(b) the occurrence of any event that terminates the continued membership of the last remaining Member of the Company; provided, however, that the Company is not dissolved if, no later than ninety (90) days after the termination of the membership of the last remaining Member, the legal representative or successor of the last remaining Member, or the legal representative or successor's designee, agrees to continue the Company and to become a Member as of the date of termination of the membership of the last remaining Member;

(c) entry of a decree of judicial dissolution of the Company;

(d) the occurrence of a nonwaivable event under the terms of the FRLCA which requires the Company to be terminated; or

(e) by the act of a Simple Majority of the Members, if no capital has been paid into the Company, and the Company has not otherwise commenced business.

**16.02 Business May Be Continued.** Except as provided in paragraph 16.01(b) of this Agreement, any event that terminates the continued membership of a Member in the Company shall not dissolve the Company if at least a Simple Majority of the remaining Members agree to continue the business of the Company, within ninety (90) days after the date of dissolution. If ninety (90) days have expired, the Members must amend the Articles of Organization during the three (3) year period following the event of dissolution, to exclude the event of dissolution, as applicable.

**16.03 Purchase of Former Member's Membership Interest.** Upon an event requiring dissolution as provided in 16.01 of this Agreement, the Company's books shall be closed upon the date of such event, so as to determine the Former Member's Membership Interest value on the date ending all of the Former Member's financial interest in the Company. Within one hundred eighty (180) days of such event, the Company shall purchase the Former Member's Membership Interest at Fair Value (as determined by paragraph 14.07 of this Agreement), upon terms of purchase as provided in Article XIV of this Agreement.

**16.04 Liquidation and Dissolution.** As soon as possible following an event requiring dissolution of the Company, the Members shall act as liquidator or may appoint one or more Members as liquidator. The liquidator shall proceed diligently to wind up the affairs of the Company and make final distributions as provided herein and in the FRLICA. The costs of liquidation shall be borne as a Company expense. Until final distribution, the liquidator shall continue to operate the Company properties with all of the power and authority of the Members. The steps to be accomplished by the liquidator are as follows:

(a) as promptly as possible after such event and again after final liquidation, the liquidator shall cause a proper accounting to be made by a recognized firm of certified public accountants of the Company's assets, liabilities, and operations through the last day of the calendar month in which the dissolution occurs or the final liquidation is completed, as applicable;

(b) the liquidator shall cause the notice described in Section 605.0711 of the Florida Statutes to be mailed to each known creditor of and claimant against the Company in the manner described in such statute, and shall follow the procedure of Section 605.0712, Florida Statutes, to resolve payment of unknown claims;

(c) the liquidator shall pay, satisfy or discharge from Company funds all of the debts, liabilities and obligations of the Company (including, without limitation, all expenses incurred in liquidation and any loans or advances described in paragraph 4.04 of this Agreement) or otherwise make adequate provision for payment and discharge thereof (including, without limitation, the establishment of a cash escrow fund for contingent liabilities in such amount and for such term as the liquidator may reasonably determine); and

(d) all remaining assets of the Company shall be distributed to the Members as follows:

(i) the liquidator may sell any or all Company property, including to Members, and any resulting gain or loss from each sale shall be computed and allocated to the Capital Accounts of the Members;

(ii) with respect to all Company property that has not been sold, the fair market value of that property shall be determined and the Capital Accounts of the Members shall be adjusted to reflect the manner in which the unrealized income, gain, loss, and deduction inherent in property that has not been reflected in the Capital Accounts previously would be allocated among the Members if there were a taxable disposition of that property for the fair market value of that property on the date of distribution; and

(iii) Company property shall be distributed among the Members in accordance with the positive Capital Account balances of the Members, as determined after taking into account all Capital Account adjustments for the taxable year of the Company during which the liquidation of the company occurs (other than those made by reason of this clause (iii)); and those distributions shall be made by the end of the taxable year of the Company during which the liquidation of the Company occurs (or, if later, ninety (90) days after the date of liquidation).

All distributions in kind to the Members shall be made subject to the liability of each distributee for costs, expenses, and liabilities theretofore incurred or for which the Company has committed prior to the date of dissolution and those costs, expenses, and liabilities shall be allocated to the distributee pursuant to this paragraph. Upon completion of all distributions to the Member, such distribution shall constitute a complete return to the Member of its Capital Contributions and release all claims against the Company. To the extent that a Member returns funds to the Company, it has no claim against any other Member for those funds.

**16.05 Deficit Capital Accounts.** Notwithstanding anything to the contrary contained in this Agreement, and notwithstanding any custom or rule of law to the contrary, to the extent that the deficit, if any, in the Capital Account of any Member results from or is attributable to deductions and losses of the Company (including non-cash items such as depreciation), or distributions of money pursuant to this Agreement to all Members in proportion to their respective Percentage Interests, upon dissolution of the Company such deficit shall not be an asset of the Company and such Members shall not be obligated to contribute such amount to the Company to bring the balance of such Member's Capital Account to zero.

**16.06 Articles of Dissolution.** On completion of the distribution of Company assets as provided herein, the Company is dissolved, and the Members (or such other person or persons as the FRLICA may require or permit) shall file Articles of Dissolution pursuant to Section 605.0707 of the Florida Statutes with the Department of State of Florida along with a certificate from the comptroller that all fees and license taxes owing to the State have been paid, and take such other actions as may be necessary to terminate the Company.

**ARTICLE XVII  
AMENDMENT OR MODIFICATION**

17.01 **Amendment or Modification.** This Agreement may be amended or modified from time to time only with a written instrument executed with the unanimous consent of the Members.

17.02 **Special Provisions for Certain Amendments or Modifications.**

(a) An amendment or modification reducing a Member's Percentage Interest or increasing its Capital Commitment (other than to reflect changes otherwise provided by this Agreement) is effective only with that Member's consent.

(b) An amendment or modification reducing the required Percentage Interest or other measure for any consent or vote in this Agreement is effective only with the consent or vote of Members having the Percentage Interest or other measure theretofore required.

(c) An amendment to establish the relative rights and preferences of the Membership Interests of any class or series may be made by a committee of Members, within the authority of Members or otherwise provided in the Articles of Organization, the FRLCA, or resolutions by Members forming the committee.

(d) An amendment or modification made solely to reflect the admission or withdrawal of a Member (such as to Exhibit A) need not be approved by any Member if the requirements set forth in this Agreement with respect to the admission or withdrawal of the Member are otherwise satisfied.

**ARTICLE XVIII  
GENERAL PROVISIONS**

18.01 **Construction.** Whenever the context requires, the gender of all words used in this Agreement includes the masculine, feminine, and neuter. In the event there is only one Member, then references to Members in the plural should be construed as singular.

18.02 **Offset.** Whenever the Company is to pay any sum to any Member, any amounts that Member owes the Company may be deducted from that sum before payment.

18.03 **Notices.** Except as expressly set forth to the contrary in this Agreement, all notices, requests, or consents provided for or permitted to be given under this Agreement must be in writing and must be given either by depositing that writing in the United States mail, addressed to the recipient, postage paid, and registered or certified with return receipt requested or by delivering that writing to the recipient in person, by courier, or by facsimile transmission; and a notice, request, or consent given under this Agreement is effective on receipt by the person. All notices, requests, and consents to be sent to a Member must be sent to or made at the addresses given for that Member on Exhibit A or such other address as that Member may specify by notice to the other Members. Any notice, request, or consent to the Company or the Members

must be given to the Members at the following address:

1700 E LAS OLAS BLVD. STE. 207  
FORT LAUDERDALE, FL 33301

Whenever any notice is required to be given by law, the Articles of Organization or this Agreement, a written waiver thereof, signed by the person entitled to notice, whether before or after the time stated therein, shall be deemed equivalent to the giving of such notice.

**18.04 Entire Agreement; Supersedes Other Agreements.** This Agreement includes the entire agreement of the Members and their Affiliates relating to the Company and supersedes all prior contracts or agreements with respect to the Company, whether oral or written.

**18.05 Effect of Waiver or Consent.** A waiver or consent, express or implied, to or of any breach or default by any person in the performance by that person of its obligations with respect to the Company is not a consent or waiver to or of any other breach or default in the performance by that person of the same or any other obligations of that person with respect to the Company. Failure on the part of a person to complain of any act of any person or to declare any person in default with respect to the Company, irrespective of how long that failure continues, does not constitute a waiver by that person of its rights with respect to that default until the applicable statute-of-limitations period has run.

**18.06 Binding Effect.** Subject to the restrictions on Transfers set forth in this Agreement, this Agreement is binding on and inure to the benefit of the Members and their respective heirs, legal representatives, successors, and assigns. However, unless and until properly admitted as a Member, no Transferee will have any rights of a Member beyond those provided expressly set forth in this Agreement or granted by the FRLLC to Transferees.

**18.07 Governing Law.** THIS AGREEMENT IS GOVERNED BY AND SHALL BE CONSTRUED IN ACCORDANCE WITH THE LAW OF THE STATE OF FLORIDA, EXCLUDING ANY CONFLICT-OF-LAWS RULE OR PRINCIPLE THAT MIGHT REFER THE GOVERNANCE OR THE CONSTRUCTION OF THIS AGREEMENT TO THE LAW OF ANOTHER JURISDICTION.

**18.08 Severability.** If any provision of this Agreement or the application thereof to any person or circumstance is held invalid or unenforceable to any extent, the remainder of this Agreement and the application of that provision to other persons or circumstances is not affected thereby and that provision shall be enforced to the greatest extent permitted by law.

**18.09 Further Assurances.** In connection with this Agreement and the transactions contemplated hereby, each Member shall execute and deliver any additional documents and instruments and perform any additional acts that may be necessary or appropriate to effectuate and perform the provisions of this Agreement and those transactions.

**18.10 Waiver of Certain Rights.** Each Member irrevocably waives any right it may have to maintain any action for dissolution of the Company or for partition of the property of the

Company.

18.11 **Indemnification.** To the fullest extent permitted by law, each Member shall indemnify the Company, each other Member and hold them harmless from and against all losses, costs, liabilities, damages, and expenses (including, without limitation, costs of suit and attorney's fees) they may incur on account of any breach by that Member of this Agreement.

18.12 **Counterparts.** This Agreement may be executed in any number of counterparts with the same effect as if all signing parties had signed the same instrument.

**ARTICLE XIX  
NOTICES**

19.01 **Compliance with Regulation D of the Securities Act of 1933.** THE OWNERSHIP INTERESTS THAT ARE THE SUBJECT OF THIS COMPANY AGREEMENT HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR ANY STATE SECURITIES LAWS. THE INTERESTS MAY NOT BE OFFERED FOR SALE, SOLD, PLEDGED, TRANSFERRED, OR OTHERWISE DISPOSED OF UNTIL THE HOLDER THEREOF PROVIDES EVIDENCE SATISFACTORY TO THE MEMBERS (WHICH, IN THE DISCRETION OF THE MEMBERS, MAY INCLUDE AN OPINION OF COUNSEL) THAT SUCH OFFER, SALE, PLEDGE, TRANSFER, OR OTHER DISPOSITION WILL NOT VIOLATE APPLICABLE FEDERAL OR STATE SECURITIES LAWS. THE OWNERSHIP INTERESTS THAT ARE THE SUBJECT OF THIS COMPANY AGREEMENT ARE SUBJECT TO RESTRICTIONS ON THE SALE, PLEDGE, TRANSFER, OR OTHER DISPOSITION AS SET FORTH IN THIS COMPANY AGREEMENT.

19.02 **Notice to Members.** By executing this Agreement, each Member acknowledges that it has actual notice of all of the provisions of this Agreement, including, without limitation, the restrictions on the transfer of Membership Interests set forth in this Agreement, and all of the provisions of the Articles of Organization. Except as otherwise expressly provided by law, each Member hereby agrees that this Agreement constitutes adequate notice of any notice requirement under Chapter 679 of the Florida Statutes, the Uniform Commercial Code - Secured Transactions, and each Member hereby waives any requirement that any further notice thereunder be given.

**IN WITNESS HEREOF**, the Members have executed this Company Agreement, as of the Effective Date.

**MEMBERS:**

  
\_\_\_\_\_  
ERIC J. PIERCE  
Date signed: 1-23-19

*Mark Dahms*

MARK DAHMS

Date signed: 1-23-19

*Allampe*

ALLAMPE

Date signed: 1/23/19

**EXHIBIT A**  
**MEMBERS OF MEDALIST RESTAURANT GROUP, LLC**

<b><u>Member's Name and Address</u></b>	<b><u>Initial Capital Contribution</u></b>	<b><u>Capital Commitment</u></b>	<b><u>Percentage Interest</u></b>
ERIC J. PIERCE 1700 E LAS OLAS BLVD. STE 206 FORT LAUDERDALE, FL 33301	\$0	\$0	40%
MARK DAHMS 1700 E LAS OLAS BLVD. STE. 206 FORT LAUDERDALE, FL 33301	\$50,000.00	\$250,000.00	30%
AL LAMPE 1700 E LAS OLAS BLVD. STE. 206 FORT LAUDERDALE, FL 33301	\$0	\$300,000.00	30%